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## HISTORY OF OHIO.

### VII.

#### ENGLISH INTERESTS PARAMOUNT AMONG THE OHIO SAVAGES.

THE Ohio company had now perfected their plans and chosen an agent to visit the west—Mr. Christopher Gist, a trustworthy man and an Indian trader of great repute. "You are to go out," said they in their instructions to him, on the eleventh of September, 1750, "as soon as possible to the westward of the great mountains, and carry with you such a number of men as you think necessary in order to search out and discover the lands upon the River Ohio (and other adjoining branches of the Mississippi) down as low as the great falls thereof. You are particularly to observe the ways and passes through all the mountains you cross, and take an exact account of the soil, quality and product of the land; the width and depth of the rivers and the several falls belonging to them, together with the courses and bearings of the rivers and mountains as near you conveniently can. You are also to observe what nations of Indians inhabit there, their strength and numbers, who they trade with and in what commodities they deal.

"When you find a large quantity of good, level land, such as you think will suit the company, you are to measure the breadth of it in three or four different places, and take the courses of the river and mountains on which it binds, in order to judge the quantity. You are to fix the beginning and bounds in such manner that they may be easily found again by your de-

scription. The nearer in the land lies the better, provided it be good and level; but we had rather go quite down the Mississippi than take mean, broken land. After finding a large body of good, level land, you are not to stop, but proceed farther, as low as the Falls of the Ohio, that we may be informed of that navigation. And you are to take an exact account of all the large bodies of good, level land in the same manner as above directed, that the company may the better judge where it will be most convenient for them to take theirs. You are to note all the bodies of good land as you go along, though there is not a sufficient quantity for the company's grant; but you need not be so particular in the mensuration of that as in large bodies. You are to draw as good a plan as you can of the country you pass through, and take an exact and particular journal of all your proceedings and make a true report thereof to the Ohio company." Besides, Mr. Gist was to invite the friendly Indians to meet Virginia commissioners in the spring, at Logstown, to receive a present from their father, the king.

Gist started on his journey on the last day of October, 1750, from "Colonel Cresap's, at the Old Town, on the Potomac, in Maryland," going along an old Indian path and reaching the top of the Alleghany mountain on the fifth of November. The Laurel Hill was crossed on the twelfth, and two days after he reached an Indian camp on the Kiskiminetas. Here he staid the whole of the fifteenth. On Monday, the nineteenth, he arrived at Shanoppin, "on

the southeast side of the Ohio" (Allegheny; for the two rivers were still called the Ohio). This was a small Delaware town.\* He did not set out again until the twenty-fourth, when he and his men swam their horses across the Allegheny (or Ohio, as he calls it) and went down the river twenty-one miles to Logstown.

"In the town," says Mr. Gist, "I found scarce anybody but a parcel of reprobate Indian traders, the chief of the Indians being out hunting. Here I was informed that George Croghan and Andrew Montour, who were sent upon an embassy to the Indians, had passed about a week before me. The people here inquired of me what my business was; and because I did not readily inform them, they began to suspect me, saying I was come to settle the Indian lands, and that I should never go home again safe. I found this discourse was like to be of ill consequence, so pretended to speak very slightly of what they had said, and inquired for Croghan (who is a mere idol among his countrymen, the Irish traders) and Andrew Montour, the interpreter for Pennsylvania. I told them I had a message to deliver the Indians from the king, by order of the president of Virginia, and for that reason wanted to see Mr. Montour. This made them all pretty easy (being afraid to interrupt the king's message), and obtained me quiet and

\* This town will be found accurately located on Lewis Evans' map of the middle British colonies, 1755, on the southeast side of the Allegheny river, a short distance above where Pittsburgh was afterwards laid out, but now in the twelfth ward of that city. I have followed Gist's journal in spelling the name.

respect among them; otherwise, I doubt not, they would have contrived some evil against me. I immediately wrote to Mr. Croghan by one of the traders' people."

Though Mr. Gist, at this time, was not well, he preferred the woods to such company, and on Monday, the twenty-sixth of November, set off from Logstown for Beaver, where he met one Barney Curran,\* a trader, who was selling goods for the Ohio company.† Curran joined Mr. Gist, and there were now eleven men in company; but Mr. Gist had with him from the start but one—a boy. On the seventh of December they crossed the Tuscarawas, then called Elk's-Eye creek, to a town of the Ottawas, "a nation," says Gist, "of French Indians. An old Frenchman, named Mark Kuntz,‡ who had married an Indian woman of the Six Nations, lived here. The Indians were all out hunting. The old man was civil to me; but after I was gone to my camp, upon his understanding I came from Virginia, he called me 'the Big Knife.' There are not above six or eight families belonging to this town." These had strayed off from the Ottawas at Detroit, and so far as known they were the first of that nation to settle upon any portion

of the territory now forming the state of Ohio.

Following down the right (west) bank of the Tuscarawas, Mr. Gist and his party, on the fourteenth, reached the confluence of the Mohican (or Walhonding, known in 1750, and sometimes to this day, as the "White Woman"), with the Tuscarawas, forming the Muskingum. Here, in the forks of the rivers, the Wyandots who had left the vicinity of Detroit, first stopped at Sandusky bay, and then journeyed to the Ohio at the mouth of Beaver, finally settled, receiving accessions to their village from their nation near the place first mentioned. This fact is made known by their attachments—one part being devoted to the English, the other to the French. Their town at this date was known as "Muskingum"—a word signifying "an elk's eye."|| The Wyandots sometimes were known as the "Little Mingoos." Their town consisted of about one hundred families. "When we came within sight of it," says Mr. Gist, "we perceived English colors hoisted on the [Wyandot] king's house and at George Croghan's. Upon inquiring the reason, I was informed that the French had lately taken several

\* The first name of this trader is given by Mr. Gist as "Burny," but he subsequently writes it "Barney," which was correct.

† Mr. Gist, in his journal, expressly declares that Mr. Curran was "a trader for the Ohio company." He certainly would not be mistaken. The name of this trader is given in 'Washington's Journal of Ohio,' in 1753, as "Barnaby Currin."

‡ Mr. Gist spells the name as he heard it pronounced—"Coonce."

|| That this town was between the Tuscarawas and Mohican—that is, between the two streams which, immediately below, form the Muskingum, is certain. See Lewis Evans' map of the Middle British Colonies, 1755. Mr. Evans had means for getting a correct knowledge of its location not derived from Mr. Gist; while the journal of the latter plainly indicates that as its site; for, surely, had he crossed either of the streams he would have recorded the fact. It was a number of years after this before the Delawares had a town where Coshocton now is, the county-seat of Coshocton county, Ohio.

English traders ; and that Mr. Croghan had ordered all the white men to come into this town. He had also sent expresses to the traders of the lower towns [mention of which towns will soon follow] and among the Miamis ; and the Indians had sent to their people to come to council about it.

To George Croghan, then, is due the renown of having—the first of Englishmen—thrown his country's flag to the breeze in what is now the state of Ohio, and of letting it remain in defiance of France in her claims to the Ohio country. At the head of the Muskingum, immediately upon the right bank of the Tuscarawas, just before that stream is lost in the waters of the Muskingum, the brave trader and agent of Pennsylvania boldly unfurled the British colors. This was almost at the very ending of the first half of the eighteenth century. "In November [1750]," afterward wrote Mr. Croghan, "I went to the country of the Miamis, by order of the governor [of Pennsylvania] with a small present to renew the chain of friendship, in company with Mr. Montour, the interpreter. On our journey we met Mr. Gist, a messenger from the governor of Virginia, who was sent to invite the Ohio Indians to meet the commissioners of Virginia at the Logstown, in the spring following, to receive a present of goods, which their father, the king of Great Britain, had sent them."

At "Muskingum" we will let Mr. Gist and his men rest for a brief season from the fatigue of their long journey. The village they had reached had more civilized foot-prints, although they were

those of English traders mostly, than any other in what is now the eastern portion of Ohio ; for, ever since the town had been settled—dating from the fall of 1748—these men had constantly arrived there : some making this their objective point, others going on to the mouth of the Scioto or to the Miami town on the Great Miami river. The trace, therefore, from Logstown to "Muskingum" was, in the fall of 1750, a very plain, well-worn trail.

Céleron, as we have already noticed, was sent to Detroit as commandant after his return from the Ohio. There was at once an effort made to increase that settlement in hopes of making it the centre of French power in the west. However, the attempt proved a failure. La Gallissonière had been recalled from Canada and the Marquis de la Jonquière sent out to fill his place. A thorn in the side of the French was the English post upon the site of the present city of Oswego, New York. It interfered greatly with the Canadian fur trade, and that government were anxious to have it destroyed ; but how could this be done so long as England and France were at peace ? Jonquière was instructed to induce the Iroquois, if possible, to undertake what France dare not. The governor was also enjoined to use every means to prevent English encroachments, but to act towards them at the same time with the greatest politeness.\* Jonquière soon saw that to put a stop to English progress it would be necessary to build

\* Parkman's 'Montcalm and Wolfe,' Vol. I, p. 79.



forts on Lake Erie; but his government told him Niagara and Detroit must suffice to secure forever the communications with Louisiana.

Meantime, the Canadian governor spoke honeyed words to a portion of the Iroquois. "It is not my intention," said he, "to make all the Indians withdraw that are on the Ohio river. I merely wish that all those who have abandoned their families and villages should return and join them. If you find what you want in that country, I shall be glad; but you would not regard me as a true father were I not to remark to you that the English are settling there, notwithstanding you have forbid them. Be careful to give good advice to those who are on the Ohio, so that they may be wiser in future, and not take charge of bad belts to give to their brethren, my children." "The French who will go to the Ohio," continued Jonquière, "will carry wherewith to supply the wants of those who are there, and will be careful not to disturb them. I send your son, *Sieur de Joncaire*, thither. I know that you love him and have great confidence in him. I hope the French who will go to these parts will meet with a kind reception."

The Comte de la Gallissonnière, reasoning from his field of view, thought France should make a more energetic effort to increase and strengthen Canada and Louisiana, especially as the English were active in their exertions to strengthen their colonies. The French colonies, he declared, despite their destitute condition, had always

waged war against the English of the continent with some advantage, though the latter were and always had been more numerous. This he explained in this way: The first cause was the great number of alliances that the French were keeping up with the Indian nations. "These people," said he, "who hardly act except from instinct, love us hitherto a little and fear us a great deal, more than they do the English; but their interest, which some among them begin to understand, is, that the strength of the English and French remain nearly equal, so that through the jealousy of these two nations these tribes may live independent of, and draw presents from, both. The second reason for our superiority over the English is, the number of French Canadians who are accustomed to live in the woods like the Indians, and become thereby not only qualified to lead them to fight the English, but to wage war even against these same Indians when necessity obliges. Hence it will be seen that this superiority of the French in America is in some sort accidental; and if they neglect to maintain it, whilst the English are making every effort to destroy it, it will pass into the hands of the latter."

Gallissonnière showed very clearly from his stand-point, the absolute necessity of the free and certain communication from Canada to the Mississippi. "That of the River Ohio," said he, "otherwise called the Beautiful River, is the most interesting in this relation. It rises near the country at present partly occupied by the Iroquois, runs southwardly, falls

into the Wabash [the Ohio, below the last mentioned river, being then considered as part of the Wabash, and that the first-named was a tributary of it], and with that river into the Mississippi. This last [the Mississippi] has been [was] discovered by Sieur de la Salle, who took possession of it in the king's name;\* and it would to-day, perhaps, be full of French settlements, had not the governors of Canada been deterred from establishing permanent posts there by the apprehension that a contraband trade between the French traders and the English would be the consequence. Neither have the English any posts there, nor did they come to that quarter to trade, except clandestinely, until the last war, when the revolt of some neighboring nations against the French encouraged them to come more boldly. They have been summoned since the peace to retire, and if they do not do so, there is no doubt but the governor of Canada will constrain them thereto by force."

"The establishment," continues the count, "of some posts on the Ohio, is considered then one of the most urgent

expenses; but it is believed at the same time that these posts will not acquire any solidity except so far as the strength of Niagara and Detroit are augmented. The last mentioned place demands now the greatest attention. Did it once contain a farming population of a thousand it would feed and defend all the rest. Throughout the whole interior of Canada it is the best adapted locality for a town where all the trade of the lakes would concentrate. Were it provided with a good garrison and surrounded by a goodly number of settlements, it would be able to over-awe almost all the Indians of the continent. It is sufficient to see its position on the map to understand its utility. It would stand on the River St. Lawrence within reach of the Ohio, the Illinois, the River Mississippi, and in a position to protect all these different places, and even the parts north of the lakes."

"Continuing the same route and the same views," adds Gallissonière, "the post deserving of the most attention next to Detroit, or concurrently with it, is that of the Illinois. Here the climate is almost altogether changed. We are no longer exposed to the rigors of a seven months' winter, nor obliged, as in the neighborhood of Quebec, to make ruinous clearances for the purposes of improving very poor lands. Beyond the banks of the river the entire country is open and waiting only for the plow. There are already some settlers supplied with a pretty good stock of cattle, but nothing in comparison with what they could accommodate. Moreover, these vast prairies, which, in

\* 'New York Colonial Documents,' Vov. X, p. 229. This positive declaration of Gallissonière was made in December, 1750, a little less than ninety years after the events therein described took place. A like declaration was made by Madame Cavalier, La Salle's niece, six years afterwards, upon the authority of journals and maps of La Salle then in her possession, which were of a date prior to 1675. See 'Margry,' Vol. I, p. 379, note 1. Both the statements are in confirmation of so much of the anonymous 'Histoire de M. de La Salle,' to be found in the volume just cited (p. 376 *et seq.*), as refers to the discovery of a river by La Salle, which must have been the Mississippi.

various directions, extend as far as several hundred leagues beyond the Mississippi, are covered with an innumerable multitude of buffaloes, a species which will probably not run out for many centuries hence, both because the country is not sufficiently peopled to make their consumption perceptible, and because the hides not being adapted to the same uses as those of the European race, it will never happen that the animals will be killed solely for the sake of their skins, as is the practice among the Spaniards of the River de la Plata."\*

So clear was it to the mind of Céleron, at Detroit, that a forward movement must at once be made towards the south to counteract the influence of the English, that a detachment was sent to Sandusky bay, there to erect a fort. Work was commenced, and by the middle of winter it had come to be in a forward state of completion. It was located on the Sandusky river, "one of the branches of Lake Erie," at or near the site of what is now Fremont, Ohio,†

\* Memoir on the French colonies in North America, in 'New York Colonial Documents,' Vol. X, pp. 223, 224, 229, 230. It is dated, as before intimated, in December, 1750. Gallissonière, it will be remembered, was not then governor.

† This fort must not be confounded with Fort Sandusky, captured by the Indians during Pontiac's war, concerning which information will hereafter be given. That was an English fort, built by the English. The only authority extant showing the location of the French fort of 1750 is Lewis Evans' map, 1755; this will be found copied by Pownall in his map of 1776. See Pownall's "Topographical Description." Evans makes the mistake of putting down a small portion of the Sandusky river between "the lake" (now universally called "the bay" of

and was the first work of the kind erected by civilized man on any portion of the present state of Ohio. If, then, English colors were floating over the log house of the agent of Pennsylvania, at Muskingum, defiantly to the French, the colors of France were floating in the breeze, upon Sandusky bay, in equal defiance to the English.

We left Mr. Gist and his men, on the fourteenth of December, 1750, at the Wyandot village of "Muskingum," just arrived from Logstown. Here, on Monday, the seventeenth, he records in his journal that "two traders belonging to Mr. Croghan came into town and informed us that two of his people were taken by forty Frenchmen and twenty French Indians, who had carried them, with seven horse-loads of skins, to a new fort that the French were building on one of the boundaries of Lake Erie." On the eighteenth Mr. Gist acquainted Mr. Croghan and Andrew Montour with his business with the Indians. He says he "talked much of a regulation of trade, with which they were pleased and treated me very well."

On the twenty-fifth of December Mr. Gist makes a lengthy entry in his journal, which, being in many respects remarkable, an extract is here given:

This being Christmas day, I intended to read prayers; but, after inviting some of the white men, they informed each other of my intentions, and,

Sandusky and Lake Erie, on which he located the fort. Evans was undoubtedly misled by the bay always being spoken of as a lake and near Lake Erie. It is generally believed that the mouth of the bay, when first discovered, was much narrower than at present.

being of several different persuasions, and few of them inclined to hear any good, they refused to come: but one Thomas Burney, a blacksmith, who is settled there, went about and talked to them, and then several of them came, and Andrew Montour invited several of the well-disposed Indians, who came freely. By this time the morning was spent and I had given over all thoughts of them; but, seeing them, to oblige all and offend none, I stood up and said: "Gentlemen, I have no design or intention to give offense to any particular sect or religion; but, as our king indulges us all in a liberty of conscience, and hinders none of you in the exercise of your religious worship, so it would be unjust in you to endeavor to stop the propagation of his. The doctrine of salvation, faith and good works, is what I only propose to treat of as I find it extracted from the homilies of the Church of England"—which I then read to them in the best manner I could.

Here, then, at the Wyandot village of "Muskingum," in what is now Coshoc-ton county, was held the first religious meeting attended by white men (and Indians as well) in what is now Ohio, so far as is recorded in history; while Mr. Burney antedates all other artisans and his trade all other handicrafts; but that he had "settled there" only means that he was located there to do work for the Indians and Indian traders; not that he had a family with him and had built him a house, expecting it to be his permanent home.

Mr. Montour afterwards interpreted to the Indians what the speaker had said; and for what he told them beyond what fell from the lips of Mr. Gist, he alone is to be held responsible. "After I had done," continues Mr. Gist, "the interpreter told the Indians what I had read, and that it was the true faith, which the great king and his church recommended to his children. The Indians seemed well pleased and

came up to me, and returned me their thanks, and then invited me to live among them and gave me a name in their language—"Annosanoah." The interpreter told me this was the name of a good man who had formerly lived among them, and their [the Indians'] king said that must be always my name, for which I returned them thanks; but as to living among them I excused myself by saying I did not know whether the governor would give me leave, and if he did, the French would come and carry me away, as they had done the English traders. To this they answered I might bring great guns and make a fort; that they had now left the French and were very desirous of being instructed in the principles of Christianity [the Hurons had long before been so instructed by Catholic missionaries]; that they liked me very well, and wanted me to join them in marriage after the Christian manner, and baptize their children. And then they said they would never desire to return to the French, or suffer them or their [Catholic] priests to come near them more; for they loved the English, but had seen little religion among them."\*

"Some of their great men," continues Mr. Gist, "came and wanted me to baptize their children; for, as I read to them and appeared to talk about religion, they took me to be a minister of the gospel; upon which I desired Mr. Montour, the interpreter, to tell them that no minister could venture to bap-

\* Taken in a literal sense this would not have been very flattering; and there were probably some reasons why it ought to have been so taken.



tize any children until those that were sureties for them were well instructed in the faith themselves."\* "And this," added Mr. Gist, continuing his remarks on the subject, "is according to the great king's religion, in which he desires his children should be instructed, and we dare not do it in any other way than by law established." "But I hope," was the substance of his concluding words, "if I could not be admitted to live among them, that the great king would send proper ministers to exercise that office among them, at which they seemed well pleased; and one of them went and brought me his book, which was a kind of almanac contrived for them by the French, in which the days of the week were so marked that by moving a pin every morning, they kept a pretty exact account of the time—this was to show me that he understood me and that he and his family always observed the Sabbath day."

The day after Christmas Mr. Gist and the rest of the white men in Muskingum were greatly shocked by the barbarity of these same savages who so ardently the day previous had desired a minister. An Indian woman,† who had been long a prisoner and had attempted to escape, had been retaken and brought into their town on Christmas eve. This, in their eyes, was a capital offense, and the sentence of death was carried out in this way. They

carried her out of the village and let her loose; and when she attempted to run away, the persons appointed for that purpose pursued her and struck her on the ear on the right side of her head, "which beat her flat on her face to the ground." They then pierced her several times through the back with a dart to the heart, scalped her, and then threw the scalp in the air, and another cut off her head. "Thus," says Mr. Gist, "the dismal spectacle lay till the evening, and then Barney Curran‡ desired leave to bury her, which he and his men and some of the Indians did just at dark."

A white man, an Indian trader, named Taaf, reached Muskingum on the fourth of January, 1751, "from near Lake Erie," "and informed us that the Wyandots had advised him,"|| says Gist, "to keep clear of the Ottawas, a nation of Indians firmly attached to the French, living near the lakes [at Detroit]. The Wyandots told him that the branches of the lakes were claimed by the French, but that all the branches of the Ohio belonged to them (the Wyandots) and their brothers, the English; that the French had no business there; and that it was expected the other part of the Wyandots (those living near De-

‡ A trader from the Ohio company, it will be remembered, not a resident, as was Thomas Burney, the blacksmith of the Indian village.

|| This is the first positive indication, in any cotemporaneous record, that Wyandots, after the flight of Nicholas, had settled at Sandusky, although there were a number of reasons for believing such to have been the case, which we have already given. Of course when the trader left, the French had not arrived to build a fort.

\* It is suggested that some Protestant denominations might say—"and not even then."

† Although Mr. Gist does not say that the woman was a squaw, it is certain from the context that such was the case.

troit) would desert the French and come over to the English interest, and join their brethren on the 'Elk's Eye creek' (at "Muskingum," where Gist then was), and build a strong fort and town there. On Sunday, the fifth of January, Gist says he was obliged to remain in the Indian village, for the weather still continued bad, and this state of affairs had evidently detained him already longer than he desired. His horses needed recruiting; "and though corn was very dear among the Indians," he writes, "I was obliged to feed them well, or run the risk of losing them, as I had a great distance to travel."

Mr. Gist records that on Wednesday, the ninth, the wind was southerly and the weather something warmer. "This day came into town two traders from Picqualinnees ['Pickawillanies'], a tribe of the Tawightwis [Miami], and brought news that another English trader was also taken prisoner by the French, and that three French soldiers had deserted and come over to the English, and surrendered themselves to some of the traders of the Picktown ['Pickawillanies']; and that the Indians would have put them to death to revenge their taking our traders, but as the French [traders] had surrendered themselves to the English, they would not let the Indians hurt them, but had ordered them to be sent, under care of three of our traders, and delivered at this town ['Muskingum'] to George Croghan." This news was confirmed by the arrival of "Indians from near the lakes," on the eleventh.

Mr. Gist had arranged with Croghan

and Montour that they would travel the rest of their journey in company;\* so on the twelfth of January they sent their people toward the "lower town," that is, toward the Shawanese village at the mouth of the Scioto, intending soon to follow them, but they were detained by an Indian council two days—they did not get away until Monday, the fourteenth. The next day Mr. Gist records their starting in these words:

We left Muskingum and went west five miles, to the White Woman's creek [now called Mohican or Walhonding], on which is a small town. This white woman was taken away from New England, when she was not above ten years old, by the French Indians. She is now upwards of fifty; has an Indian husband and several children. Her name is Mary Harris. She still remembers they used to be very religious in New England, and wonders how the white men can be so wicked as she has seen them in these woods.

Mark Kuntz, upon the Tuscarawas, with an Indian wife, and Mary Harris, upon the Walhonding, with an Indian husband, were, it may be proper here to mention, the first while settlers of Ohio, so far as any authentic records disclose.†

On Wednesday, the sixteenth, the party left the home of "Mary Harris," going southwest twenty-five miles to "Licking Creek;" so that already, because of the salt licks near it, had that stream the name that it still bears. "About six miles from the mouth are several salt licks or ponds, formed by little streams or drains of water, clear,

\* Mr. Gist afterwards mentions his company as consisting of Mr. Croghan, Andrew Montour, Robert Callander, a boy and a servant to carry provisions.

† I have already explained why Thomas Burney, at Muskingum, should not be included.

but of a bluish color and salt taste. The traders and Indians boil their meat in this water, which, if proper care is not taken, will sometimes make it too salt to eat." From the Licking Mr. Gist and his party traveled, as the trail led them, fifty miles to "Hockhocking—a small town with only four or five Delaware families." This was near the site of the present city of Lancaster, Ohio. It was on the nineteenth of January. The party went the next day from "Hockhocking" south five miles, then west five miles, then southwest five miles, to Maguck, a little Delaware town of about ten families. It was on the north side of the famous Pickaway Plains, in what is now Pickaway county, Ohio. Mr. Gist gives a description of them—the first probably ever written. He says they are "a plain, or clear field, about five miles in length, northeast and southwest, and two miles broad, with a small rising in the middle, which gives a fine prospect over the whole plain, and a large creek on the north side of it, called Sioto [now known as the Scioto river]."

From "Maguck," where he tarried until the twenty-fourth, the travelers went down the Scioto, on the east side, about fifteen miles, as they reckoned the distance, intending to cross the river to "Hurricane Tom's" village, consisting of five or six Delaware families ;\*

\* The town is distinctly marked on Evans' map of 1755.

but the stream being very high and full of ice, they could not ford it ; so were obliged to continue down it on the left side. The party finally reached, on the

twenty-seventh, a Delaware town of about twenty families. The name of their chief—"a great man"—was Windaughalah, who was "much in the English interest.†" "The chief," says Gist, "entertained us very kindly, and ordered a negro man that belonged to him to feed our horses well." By this, it appears that African slavery had already taken root on Ohio's soil, and the first slave-owner here known to history was the Delaware chief, Windaughalah. His was the last Delaware town to the westward, and was about five miles above the mouth of the Scioto. On Tuesday, the twenty-ninth of January, the party arrived opposite the Shawanese town, where the Scioto empties into the Ohio, when they fired their guns to signal the traders, "who soon answered, and came and ferried us over," says Mr. Gist.

It is a prevailing error, and one which has hardened into print, that at this period (January, 1751), the Delaware towns were numerous in Ohio, containing a considerable population ; but the facts are that the insignificant villages of Hockhocking, Maguck, Hurricane Tom's and Windaughalah's containing in all only forty families, summed up the total Delaware towns in what is now Ohio.‡ However, there were probably some few Delawares in Muskingum and

† This village is also noted by Evans, but the name is given as "Wyanduxales;" the chief seems to have first located on the Ohio, below the mouth of the Muskingum.

‡ In this number the White Woman's town ("a small town," as Gist observes), on the Walhonding, is not given, for the reason that the nationality of its inhabitants is unknown.

in the Shawnese town then just reached by Mr. Gist and his party. Mr. Gist says :

The Delaware Indians, by the best accounts I could gather, consist of about five hundred fighting men, but are scattered about among most of the Indians upon the Ohio [meaning the Ohio and Alleghany, as we now name them], and some of them among the Six Nations, from whom they have leave to hunt upon their lands.

Although this estimate doubtless greatly over-stated their strength, it included all those among the Six Nations, those upon the Alleghany and upon the Ohio, as well as upon the Big Beaver and in the few villages just enumerated, and all those living in villages of other nations. Five years subsequent to this period, only two small villages had been added to the list of those in Ohio: one called Three Legs, upon the Tuscarawas, and another upon the Scioto opposite the site of the present city of Columbus.† And they were everywhere tenants at sufferance to the Six Nations, who claimed all the lands between Lake Erie and the Ohio by virtue of their previous conquests, already mentioned in these pages.

The village of the Shawnese, which Mr. Gist, Mr. Croghan and their party had reached, was the one at the mouth of the Scioto, already mentioned. It was known to the traders in all the west as "the Lower Town," to distinguish it from Logstown up the Ohio. It was situated on both sides of the river last mentioned, immediately below the mouth of the Scioto. It contained about three hundred men. There were some forty houses on the south side of the river

and about one hundred on the north side. On the last mentioned side there was a large council house—ninety feet in length, having a light cover of bark, in which the Indians held their councils. "The Shawanese," remarks Mr. Gist, "are not a part of the Six Nations, but were formerly at variance with them, though now reconciled. They are great friends to the English, who once protected them from the fury of the Six Nations, which they gratefully remember."

On the thirtieth the visitors were conducted into the council house, where Croghan delivered sundry speeches from the government of Pennsylvania to the chiefs present, in which he informed them that the two prisoners who had been taken by the French and had made their escape, brought news that a large sum of money was offered to any one who would bring them (meaning himself and Mr. Montour) alive, or, if dead, their scalps; and that the French also threatened the Shawanese and Wyandots of Ohio with war in the spring. The person who had brought him this news said he had seen twenty French canoes loaded with stores for a new fort which they designed to build on the south side of Lake Erie, meaning the fort at Sandusky. Mr. Croghan informed them likewise that several English traders had been taken, and he advised them to keep their warriors at home until they could see what the French intended, which, he doubted not, would be evident in the spring. Montour then informed the Shawanese, as he had the Wyandots and Delawares,

† See Evans' Map, 1755.



that the king of Great Britain had sent them a large present of goods in company with the Six Nations, which was under the care of the governor of Virginia, who had sent Mr. Gist out to invite them to come and see him and partake of their father's present next summer at Logstown. "We shall be glad to hear," said the Shawanese in reply, "what our brothers will say to us at the Logstown in the spring, and we hope the friendship now subsisting between us and our brothers will last as long as the sun shines or the moon gives light."

As Mr. Gist "had particular instructions from the president of Virginia to discover the strength and number of some Indian nations to the westward, who had lately revolted from the French and had some messages to deliver them from him," he resolved to set out for Pickawillany. He, with Mr. Croghan, Montour and Callander, and a servant to carry provisions, his boy being left behind to take care of his horses during his absence, started on the twelfth, seeing little of interest until the fifteenth, when they met nine Shawanese coming from one of the Picqualinee towns, where they had been to council. The party on the sixteenth reached the Little Miami river (which had received the name, at that date, which it still bears, as before intimated), having traveled from the mouth of the Scioto in a northwest course about one hundred and twenty-five miles. On the seventh they crossed that stream, and taking a southwest course for about twenty-five miles reached the Big Miami, opposite Pick-

awillany. The river being high, the party were obliged to make a raft of logs to transport their goods and saddles across. The horses were made to swim over. After firing a few guns and pistols, and smoking in the warrior's pipe, which warriors came to invite them to their village, according to their custom of inviting and welcoming strangers and great men, they entered the town with English colors before them and were kindly received by "Old Britain," the Piankeshaw king, who invited the strangers into his own house, and planted the British colors on top of it. "The firing of the guns," says Mr. Gist, "held about a quarter of an hour, and then all the white men and traders that were there, came and welcomed us to the Miami town."

Mr. Gist describes Pickawillany as being "on the northwest side of the Big Miami river, about one hundred and fifty miles from its mouth. It consists of about four hundred families, and is daily increasing." It will be seen, then, that this town was four times as large as Muskingum. It was constantly increasing in population; there were other nations, Mr. Gist declared, still further westward than the Miamis, daily coming in to Pickawillany. The Indians had here a pretty strong stockade, but it needed repairs; "and the traders' men helped them to bring logs to line the inside."\*

\*"The English traders had built for themselves and their hosts a fort of pickets, strengthened with logs."—Parkman, in 'Montcalm and Wolfe,' Vol. I p. 56. But Gist's words do not seem to warrant the conclusion that the English traders had erected the fort. He says: "We walked about and viewed the

It was the twenty-first of the month before Mr. Gist and Mr. Croghan had delivered to the savages all the speeches they were charged with, at which they (the Indians) seemed well pleased and said they would take time and consider well what had been said to them. On the twenty-fourth, four French Indians came in and were kindly received by the town Indians. But their endeavors to bring over the Miamis to the French interest were in vain. They were Ottawas. Their French father, they declared, would now forget all little differences that had been between them, and desired them not to be of two minds; but they should let their father know their minds freely, for he would send for them no more. To this the Piankeshaw king, "Old Britain," replied that it was true their French father had sent for them several times, and said the road was clear, but he understood it was made foul and bloody and by them. "We," said he, "have cleared a road for our brothers the English, and your fathers have made it bad, and have taken some of our brothers prisoners, which we look upon as done to us." The Miamis proper said to the four Ottawas—ambassadors of the French:

"You are always differing from the French yourselves and yet you listen to what they say, but we will let you know by these four strings of wampum that we will not hear anything they say, or do anything they bid us do." "You

fort, which wanted some repairs, and the traders' men helped them [the Indians] to bring logs to line the inside."

desire," continued the Miami speaker, "that we shall speak our minds from our hearts, which I am going to do. You have often desired [meaning the French] we should go home to you, but I tell you it is not our home; for we have a road as far as the sea—to the sun-rising and have taken by the hand our brothers, the English, the Six Nations, the Delawares, Shawanese and Wyandots; and we assure you that is the road we will go. As you threaten us with war in the spring, we tell you if you are angry, we are ready to receive you; we will die here before we will go to you." The French colors were afterwards taken down from the council house and the four Ottawas dismissed. On the twenty-seventh they set off for the new fort at Sandusky\* to report the failure of their mission. Before the arrival at Pickawillany, of three ambassadors, "two nations, called the Weas and Piankeshaws—two tribes of the Miamis—came into council and desired they might be admitted into the alliance with the English; thereupon, Mr. Croghan and Andrew Montour, rather than discourage them at so critical a time, hearkened to them and drew up an instrument which was executed on both sides."† "While I was at the Miami town," afterward wrote Mr. Croghan,

\*The language of Mr. Gist is—"They took their leave of the town and set off for the French fort." This implies the fort at Sandusky—the one he had previously referred to as "being on one of the branches of Lake Erie."

†The instrument is given in full in the Pennsylvania Colonial Records, Vol. V. pp. 522-524. The Weas and Piankeshaws were not represented at the treaty of Lancaster in 1748, as a matter of fact.

"delivering a present and message [to the Indians], there came several of the chiefs of the Weas and Piankeshaws, living on the Wabash, and requested to be admitted into the chain of friendship between the English and the Six Nations and their allies, which request I granted and exchanged deeds of friendship with them with a view of extending his majesty's Indian interest, and I made them a small present." It was evident, therefore, that, as the head chief or king of the Miamis was a Piankeshaw, that this tribe and the Weas would soon form no small part of the Indian population of Pickawillany of Miami lineage.

On the first of March, as their white visitors were about to leave, the Miamis presented them with a parting speech. "Brothers," said the speaker, "our hearts are glad that you have taken notice of us; and surely, brothers, we hope that you will order a smith to settle here to mend our guns and hatchets: your kindness makes us so bold as to ask this request. You told us our friendship should last as long and be as the greatest mountain. We have considered well and all our great kings and warriors are come to a resolution never to give heed to what the French say to us but always to hear and believe what you, our brothers, say to us. Brothers, we are obliged to you

for your kind invitation to receive a present at the Logstown, but as our foreign tribes are not yet come, we must wait for them, but you may depend we will come as soon as our women have planted corn, to hear what our brothers will say to us. Brothers, we present you with this bundle of skins, as we are but poor, to be for shoes for you on the road, as we return you hearty thanks for the clothes which you have put upon our wives and children." Then the white visitors departed.\*

The Miamis, including the Weas and Piankeshaws, had promised (as had the Shawanese at the "Lower Town" and the Delawares at Windaughalah's village) to meet their "brothers," the English, at Logstown in the coming spring or summer, to hold a treaty with them.† Wherever, therefore, there was an Indian village in the territory constituting the present state of Ohio, the English were now in the ascendant, except at Sandusky; and even there, it was evident they had many friends.

CONSUL WILLSHIRE BUTTERFIELD.

\*Some writers have stated that because of the presents taken to Pickawillany, the English received permission to build a strong trading-house there. This is wholly erroneous.

† Bancroft's language, in this connection, ('History of the United States,' Vol. II, [Ed. 1883], p. 365), is too sweeping. Not "all the friendly tribes of the west were to meet;" the Wyandots had given no such assurance.

## BUFFALO.

## III.

## THE COURIER, WITH SKETCHES OF C. W. M'CUNE AND GEORGE BLEISTEIN.

CHARLES W. M'CUNE.

ON Main and Washington streets, in the city of Buffalo, New York, are the buildings constituting the establishment of the *Courier* company, an institution of far more than local note, probably the largest general printing house in the world. Its history is that of the life success of some of the most prominent men who have shone in business and public affairs in western New York, and of two of these it is the purpose to present in this number of the MAGAZINE OF WESTERN HISTORY such sketches as, it is believed, will be read with interest and will point profitable examples. This is not an occasion for description of the imposing structures of the great abode of industry, the vast aggregation of approved machinery for the perfection of every class of typographical and illustrative work, and the volume of business carried on; still it is proper to note some especially salient features, and to briefly trace the history of the concern. While printing of every description, lithographing, engraving, electrotyping and binding are very extensively done, it is in the department of what is familiarly denominated show-printing that the widest notoriety of the establishment has been obtained, the

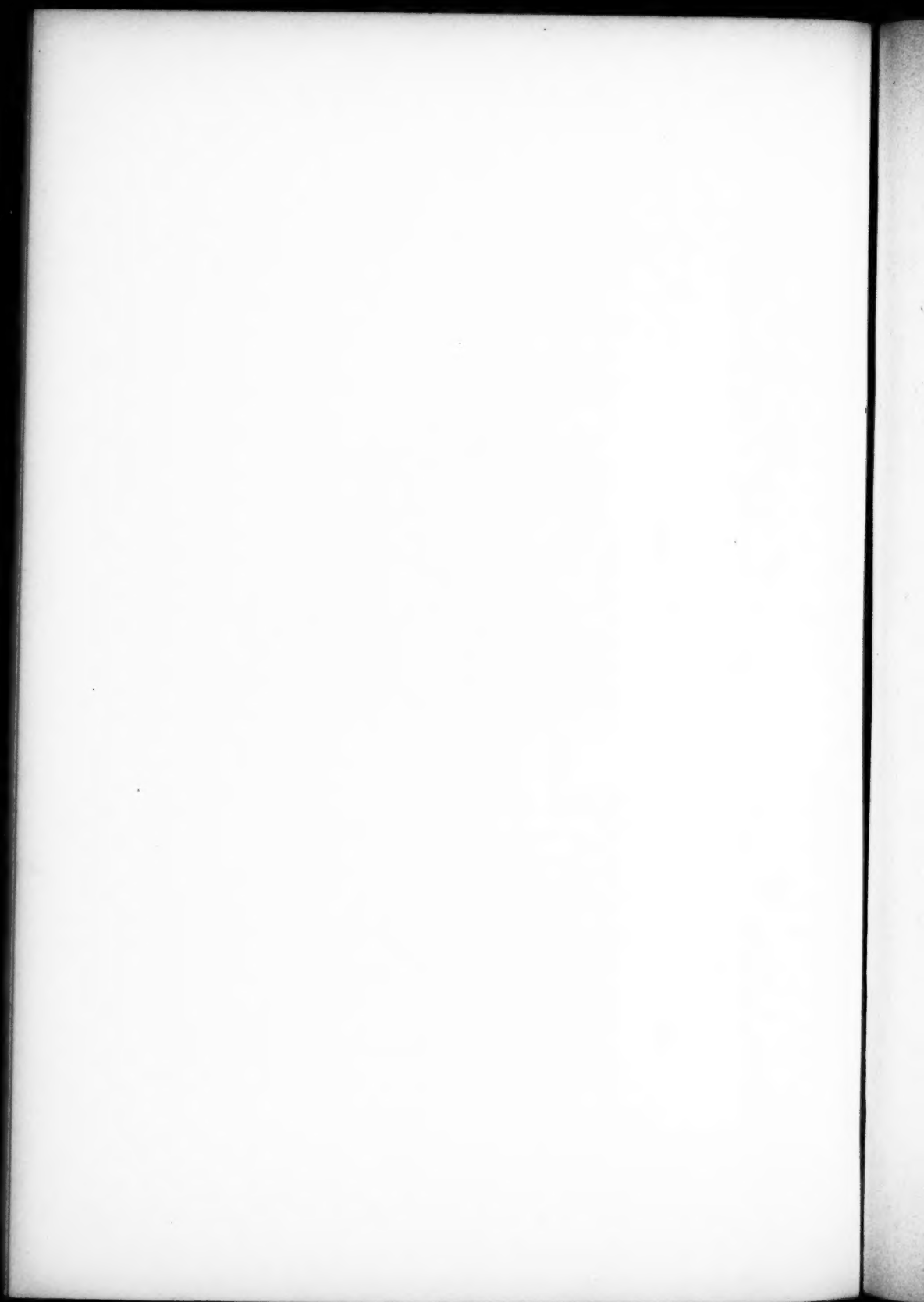
resources of the company for this kind of work being incomparable and the productions unsurpassed. A single contract in this line, made last fall, was in the neighborhood of one hundred and twenty-five thousand dollars, and others reached nearly as imposing figures.

The *Courier* company publishes two newspapers, one issued every morning of the year, the other weekly. About the habitation of these the general printing business has been built up, for years with slow, wavering growth, then with strong, steady strides. The *Courier* had its origin in the thirties, having now entered upon its fifty-second volume. Its beginning was small, and a considerable evolutionary process was requisite to develop the substantial, influential paper which it became. Its rise chiefly dates from the time when the late Joseph Warren became identified with its management, a genial, clear-headed, exceedingly popular man, who was a born political manager. He became the Democratic leader of his part of the state. Dying in 1876, Mr. Warren was succeeded as chief editor of the *Courier* by gifted and amiable David Gray, he in turn by scholarly Joseph O'Conner, he by the present editor, Mr. Edwin Fleming. During Mr. Warren's connec-





*C. W. M. Burne.*



tion with the institution, the job printing business became a feature of importance, and the show printing was made a specialty. In 1859 Mr. Warren secured a proprietary interest, and in 1860 became the senior member of the firm of Joseph Warren & Company. On the first of January, 1869, the now large printing house of this firm was consolidated with that of Howard, Johnson & Company, and a joint stock company, under the title of the *Courier* company, was formed, with Mr. Warren as the first president. He was succeeded in that position by the late Hon. William G. Fargo, then a large stockholder, but who took little active part in the actual management.

The *Courier* establishment had grown to large proportions, and an excellent reputation had been obtained for its work. But a time of financial depression throughout the country came, affecting nearly all industries. The *Courier* company felt it in the shrinkage of patronage, and for a time the outlook was rather dark. But in the closing part of the year 1874 a man came into the office who was to put new life and vigor into its affairs.

Like so many of the men of America who have risen to distinction in political or business life, Charles Willard McCune was self-made. His years of school attendance were few, still he acquired broad information and numerous accomplishments; at the outset his opportunities were of no brilliant promise, but he had the true business instinct and faculties, and was a genuine type of energy. A bright boy, he early

developed a very keen order of intelligence, and remarkable comprehension of the qualities and motives of others, this capacity for reading human character being, no doubt, an important factor in the accomplishment of his success, united as it was with the advantages of a fine presence and naturally pleasing address.

Mr. McCune was born in Brattleboro, Vermont, on the first of September, 1828, and in childhood obtained the rudiments of knowledge in the schools of that village. From eight until twelve years of age he attended the Brattleboro institute, this period completing his brief school life, although in after years his polished style of conversation and general acquaintance with literature and the arts might well convey the impression that he had pursued a thorough scholastic course. From the school he went to Orlen Pratt's country store. The beginning was humble, but business life was the sphere for which nature designed him, and the boy clerk served his employer with industry and devotion such as he could not have given had he not found the duty instructive and to his taste. After two years thus spent in acquiring the first lessons in the transaction of commercial affairs, he left Mr. Pratt to accept a clerkship in the store of A. E. Dwinnell, in the east village of Brattleboro, taking to the discharge of his new duties a knowledge of business methods exceptional for a youth of fourteen. Here, as everywhere else, industry was shown as one of his dominating traits. The fidelity and intelligence of his service were such that

it could not fail to give satisfaction; at the same time, far more valuable than the little salary he received, he was accumulating for future advantageous use the fruits of every day's experience. Young McCune was ambitious. The field of the country village was too circumscribed for one of his calibre, and, after a year with Mr. Dwinnell, he went to New York to grapple with such favorable chances as the vigorous, hopeful young man, early trained to self-reliance, might find in the great metropolis. Opportunity was open to him, as it usually is to those of his stamp. In 1847, on the first of August, he entered the famous dry goods house of A. T. Stewart & Company. His place there among the army of employés was at first insignificant, but he was not one to be long overlooked. His intelligence and special capacity quickly enlisted the attention of Mr. Stewart. Uniformly faithful, and making the interest of his employers his own first interest, he was rapidly advanced in position until ultimately placed at the head of one of the most important departments of the establishment, where the responsibility was large and the confidence reposed in him necessarily implicit. While in this station, Mr. McCune spent much of his time in Europe buying goods for the firm, a line of duty for which he had the highest qualifications, both as regarded his expertness concerning the qualities and desirability of the articles and his capacity for advantageous bargaining. This work abroad was exacting, but the man of such quick perceptions and ob-

servant mind as were Mr. McCune's, did not fail to profit by the general educational advantages afforded by foreign travel. He acquired fluent use of the French language and a rich fund of knowledge of European customs and affairs.

It should be noted that when this trust of representing A. T. Stewart & Company abroad devolved upon him, he had only attained his majority. It was, therefore, a splendid compliment to his ability and integrity. He remained with this firm thirteen years, retiring on the first of September, 1860, to take a position in the importing house of Morton, Grinnell & Company. On the first of January of the following year he was admitted to a partnership in this house, the firm name becoming L. P. Morton & Company. On the first of January, 1864, McCune, Scott & Company succeeded to the business of L. P. Morton & Company. Three years later, Mr. McCune withdrew and went to Europe, where he remained fifteen months. Returning, he engaged in business in Wall street for a time, and still later renewed it for a brief period, but he preferred legitimate to speculative trade. Again he went abroad, spending nine months in this practically valuable, as well as enjoyable, sojourn. In 1873, while in Paris, he was offered an important place in a large concern in that centre of fashion, and was on the point of accepting it when he was induced to return to America and visit friends in Buffalo, New York. Thus he was led into a new path in which he was to achieve



the success of his life and become known throughout the country.

On the first of December, 1874, Mr. McCune entered the office of the *Courier* company as manager, and a month later was made secretary and treasurer. The institution was already a large one, with a national reputation. Mr. McCune was destined to concentrate its interests, enhance its facilities, and, eventually, become practically the sole owner of the magnificent property which notably increased in value and importance under his wonderfully effective administration. He had no previous particular knowledge of printing, all branches of which the company carried on, but he seemed intuitively to grasp the details of the business. The effect of his sagacious, enterprising management was almost at once apparent. The establishment began to know prosperity even greater than it had ever known before. Its reputation was already that of one of the greatest printing houses on the continent. As has been well said by another writer, "to make himself familiar with all its departments, to master all the details of its large and complex business, to familiarize himself with all the conditions of its growth and prosperity, and to learn to know and estimate at their true value the hundreds of men and women employed by the concern, and the clientèle of the company was a formidable undertaking." But his administration, eminently judicious and energetic from the first hour, was successful to completion. The business reached proportions which had been

before regarded as unattainable. In the words of the one who has been already quoted, "his clear and comprehensive views, his thorough business training, his faculty for organization and his courage and enterprise were given full play, and each contributed to the great success of his management and gave to his administration a force and brilliancy rarely equaled." When Joseph Warren died in 1876, Mr. McCune became responsible for the policy and tone of the several journals then published by the company. This was still another duty requiring clearest and calm judgment. That they continued to be and are still recognized for their dignity, ability and purity, is another proof of the breadth of the capacity of the man. On the third of March, 1880, he became the *Courier* company's president, in which position he continued until his death. By purchase he secured the stock until he was virtually the proprietor, the form and privileges of incorporation being, however, preserved.

It was natural that a man of Mr. McCune's characteristics should be interested in the political affairs of his country, state and city, especially in view of the fact that the leading newspaper conducted by the company had been the long acknowledged spokesman for the Democratic party in western New York. He had no gift as a public speaker, and never any desire for political office, but for a party manager he was admirably fitted and equipped, and no man in his part of the state did better service for the Democracy, or gave more

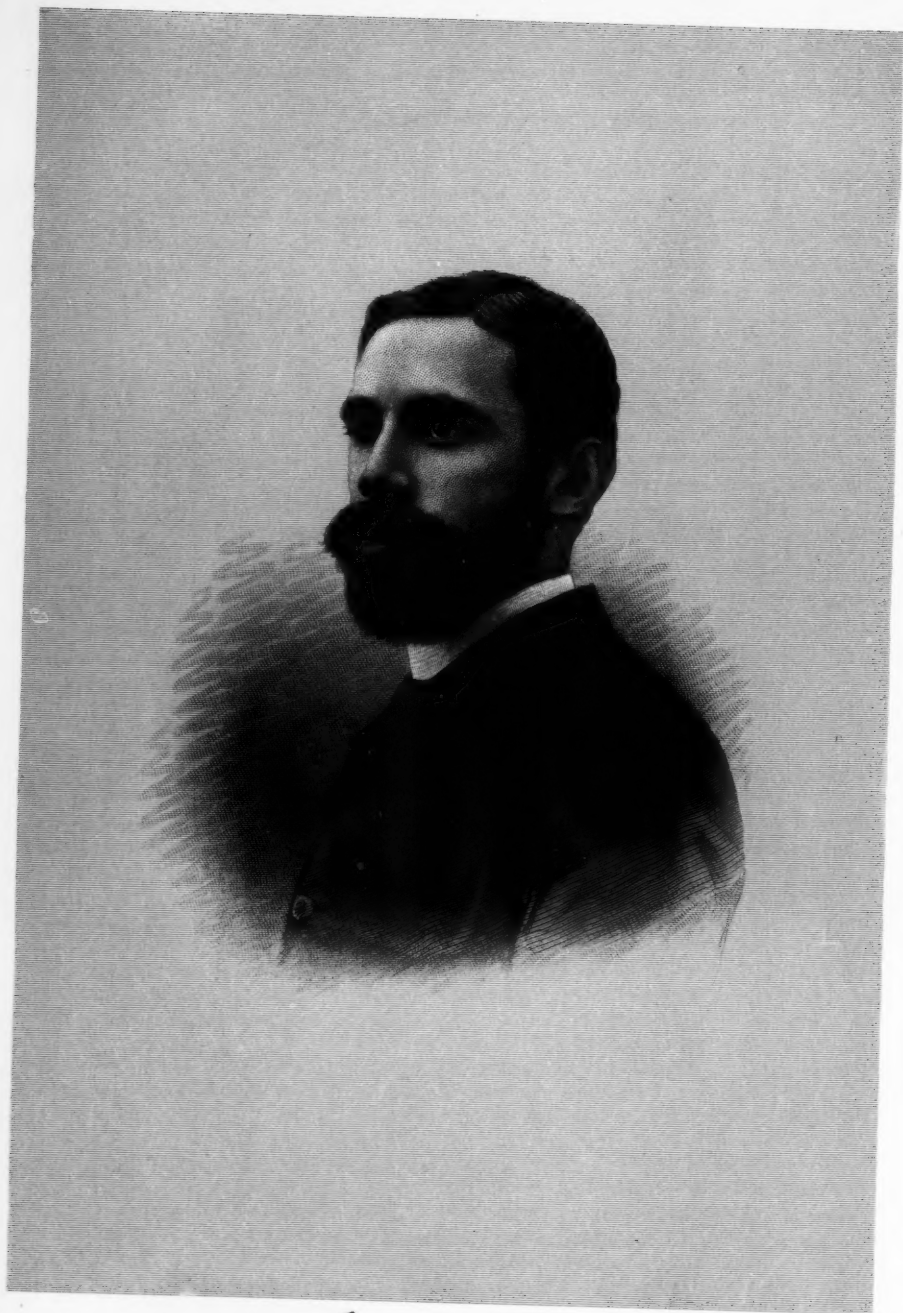
liberally of generous means for the advancement of its interests. In 1877 he was elected a member of the Democratic state committee, and each successive year was reelected to the place, his death cutting short his eighth term. "His activity in that position was such as to make a strong impression upon those who were associated with him. His influence was largely potential, not because he controlled one of the strongest organs of the Democratic party in the state, but on account of the soundness of judgment displayed by him, and the quickness of his perceptions in moments of emergency." He was on terms of intimate acquaintance with Grover Cleveland, sanguine of his availability and destiny, and worked enthusiastically for his friend's election first to the governorship of New York, then to the Presidency of the United States. In the politics of Erie county and the City of Buffalo, he was looked to as the leader and chief director of the party policy, great consideration being given to his shrewdness and correct appreciation of situations.

With all these cares of politics and an enormous business, Mr. M'Cune still found time for the social amenities of life. He was most genial, a delightful companion. Although a business man of the world who made his fortune by sheer persevering force, he was by no means a hard taskmaster. On the other hand, sentiment entered largely into his management of affairs, and he was most kind to his dependents, often exercising forbearance when it almost

ceased to be a virtue. Thus the year 1885 found him one of the most prosperous and prominent men in Buffalo, a millionaire, without a dollar of debt on his large property, identified with many public interests, his value as a citizen conceded by all the community.

In 1852 Mr. M'Cune was married to Miss Sarah C. Beardsley, daughter of Judge Beardsley of St. Albans, Vermont. Their wedded life was short. Two children were born to them, then the mother died. Of the children, but one lived to maturity, Miss Ella. In charming womanhood, her father's idol, she was stricken with fatal illness and died in the early part of 1884. The blow was one of the heaviest of his life, but the strong man rallied from it, and more than ever busied himself with active affairs. On the twenty-second of January, 1885, he was again married, to Miss Elizabeth Wells, grand-niece and adopted daughter of the Hon. Chandler J. Wells, ex-mayor of Buffalo. Mr. M'Cune was once more a happy man. He was in the zenith of his prosperity. He had in mind new enterprises. Truly, "In the midst of life we are in death." On the fourteenth of March, 1885, the bride of a few weeks was a widow. Soon after returning from the wedding trip, Mr. M'Cune unfortunately contracted a severe cold. Urgent business called him to New York, whence he returned on the twenty-second of February. It had been his boast that he had never known a sick day in his life, but now he was compelled to recognize that he was seriously ill. He took to





*Gleistein*

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his bed, and never rose from it in life. Among the many passages written concerning his lamented death, were these :

He was a man of no ordinary character. Gifted with keen perceptions, an iron will, and a boundless confidence in his own judgment and resources, he achieved a distinguished success with amazing rapidity, in a pursuit which brings financial disaster to many able men ; and this, too, notwithstanding the fact that he had reached middle age before he acquired the slightest knowledge of it.

Nor were his interests and energies monopolized by his business, though that alone was a very heavy burden for any one man to bear. He took an active and conspicuous part in the politics of the state, efficiently and honorably representing the Democracy of Erie county from 1877 to the time of his death, as a member of his party's state committee. He shared the varied social and civic activities of the day, and was always, in every sense of the word, one of Buffalo's "live men." All these labors and responsibilities were borne with an ease that excited at once the admiration and the anxiety of his friends—an anxiety that was justified by the end. The tax the strong man laid upon his splendid mental and physical powers could not be evaded. It had to be paid, and our daring, sanguine, energetic friend and neighbor is gone—cut off in his prime, leaving behind him a widowed bride with whom he was about to begin what promised a very happy life, and a vast enterprise for which he had planned new developments.

By his will Mr. M'Cune left the bulk of his property to his widow. The business of the *Courier* establishment was conducted by Messrs. George Bleistein and Ansley Wilcox, the executors—the former having the direct charge—until the settlement of the estate was effected.

#### GEORGE BLEISTEIN.

The present president of the *Courier* company is George Bleistein, a native of Buffalo, now in his twenty-fifth year, and no doubt one of the youngest men in America in complete charge of a

business of such magnitude, and with such a maze of detail. For two years he has conducted it with signal success, the affairs of the institution being kept in admirable shape, without friction of any kind. This it will be conceded is probably in a measure due to the excellent condition in which the late owner, Mr. M'Cune, left the property and business, without any sort of embarrassment, with an enormous patronage, and everything in perfect running order. The momentum obtained was such that only a disaster could stop it. Yet this is perhaps only sentimental reflection. It is easy for the coldly critical business man of long experience to see how the mistakes of an ill-trained youth, or one whose neck was not stiff enough and brain good enough for the situation, might quickly make a wreck of the goodly fabric which years of the exercise of the boundless energy of exceptionally strong, mature men had built up. Here then, to begin with, is an almost phenomenal case, one it is believed with hardly a parallel in the industrial annals of the country, for Mr. Bleistein has met the enormous responsibility which has so singularly fallen upon him, with the ease of complete strength, and has fitted right into the place in a way which has excited the wonder of those who doubted, and the admiration of all.

The story of his life need not take long to tell ; yet it is most eloquent as a reminder of the possibilities open to young men, the reward which may follow honest, earnest application to duty, and conscientious regard for the interests of

those they serve. Not that it is at all probable that many may reap prosperity in such large measure as has Mr. Bleistein, for in this respect his case is again phenomenal; but the lesson is that duty well performed is likely to meet its substantial recompense in natural degrees. Less than eleven years ago George Bleistein was an applicant at the counting-room for a position as office-boy, the humblest place among all the hundreds of employés of the establishment which he to-day practically owns.

It was on the fifth of May, 1876, that a slight boy presented himself at the office of the great printing house and asked for work. Such applications were multitudinous. He was told that there was no present opening, and with evident disappointment passed slowly out. But something in the appearance or bearing of the lad had left an impression on the then general manager of the company which remained, notwithstanding the unceasing pressure of business affairs, and, as he afterwards related, he could not help thinking that this boy might prove of no common value, and that it would be well to make a place for him.

Chance favored the youngster, for the next morning manager and boy happened to meet on the street. The former hailed the latter. "Are you not the boy who asked me for a job yesterday?" The lad's face lighted up hopefully as he promptly answered, "Yes, sir." "Well, come around this afternoon and you can begin work as office-boy at two dollars a week." And so

George Bleistein obtained his entrance to the business world.

It may be inferred that there have been office-boys and office-boys in the *Courier* establishment. Probably some of them have been turned away as worthlessly lazy or hopelessly dull. This particular office-boy, however, was far from lazy and anything but dull. His duties were varied; now perhaps to engineer a steam elevator, then to distribute the mail through the buildings, run on errands, keep things tidy in the neighborhood of the manager's desk, see that the overcoat and umbrella of that gentleman were handy, and a thousand and one other such minor services, some perhaps better suited to his taste than those enumerated, for he had such education as the common school gives, and could write a good hand. As a rule, however, his duties were of the insignificant class. Had he simply performed them perfunctorily, it is possible that Mr. Bleistein, provided he staid in the employ of the concern at all, would to-day be trundling a truck, or perchance be marking packing cases.

That was not his nature, though. He put heart into everything he did, and head, too, for he had what people call a long head, and appreciated that the only way to enforce recognition was by the performance of duty better than well. He was especially fortunate in the character of his patron. Mr. McCune was a quick man to measure his employés, and while he had no patience with shiftlessness and stupidity, liked always to reward merit. He did not fail to observe the fidelity of his office-boy,

the boy's industry, his methodical neatness, the intelligence shown in all he did. Young Bleistein was modest and unobtrusive, as he is to this day. He seemed intuitively to know how to best serve and please his employer. It was not long before Mr. M'Cune was fully satisfied that his first impression had not been erroneous; that he had hired a smart boy who was bound to amount to something.

The office-boy's duties gave him the entree of the manager's office. Into this private precinct a great many men with whom the house had business were introduced, to have converse over frequently complex matters, where often shrewd, hard figuring was done on both sides, and extreme diplomacy exercised in effecting bargains and settlements. Your average office-boy would probably sit in his corner as oblivious to the spirit of all this as though the conversation were carried on in Greek, but young Bleistein was of a different cast. He had business instincts; the faculty of comprehending affairs; so the manager's office had for him the advantages of a practical school. He kept his own counsel, and so preserved his privilege of hearing a great variety of matters pertaining to the institution discussed. He knew a good deal about the business interests of the *Courier* company probably before Mr. M'Cune was aware that he had any especial ideas above the affixing of postage-stamps and the manipulation of the feather duster. But as has been said, the gentleman early took notice of the boy's zeal in the performance of the simple tasks assigned him.

He would not promote him on impulse, however; it was well to ascertain if the zealous disposition would wear; but he induced his young protégé to devote his evenings to a business college, and in other ways aided him to prepare for the broad field of effort which was before him. The zeal of the youth did not subside; his industry did not abate; his integrity as well as his intellectual capacity were proved. Two years of service found him in a clerical position, and the fortunate possessor of the firm friendship of his employer, which intensified with the passage of time until it developed into a truly filial regard. Death having taken away the company's general superintendent, Mr. Bleistein was appointed to the position, thus having supervision of all the departments. Such advancement might have turned the head of many a man. Bleistein was yet what most men would call a boy. But Mr. M'Cune made no mistakes in such matters. He was entirely confident of the youth's competence for the place he gave him.

The interests with which Mr. M'Cune became identified, in Buffalo and elsewhere, were a multitude, and the weight of affairs upon him ponderous. It was absolutely necessary that he should be relieved of some of his responsibilities and a considerable part of the detail of management, and these were gradually shifted to the younger shoulders. Friendship was not the controlling motive here. It could not have retained George Bleistein in the position he now occupied in the company's service unless he had the ability

to fill it. But he answered every requirement. His practical knowledge of the business became complete, and when in 1880 Mr. M'Cune was made president of the *Courier* company he had a confidential assistant in whom he could repose full trust, both as to integrity and capacity. The latter became in effect the general manager of the company's office affairs. The union of friendship and sympathy between the young and the older man was now warm and close, and seemed to become still closer after the death of Mr. M'Cune's daughter, his only child, in April, 1884.

Mr. Bleistein was fairly on the road to success. As in the case of Mr. M'Cune, although his actual school-house attendance had been brief and devoted to only the common branches of study, his faculty for observation and the assimilation of knowledge had made him generally well-informed; his intercourse with business men of the sharpest, brightest classes, had quickened his always keen intellect, and he had acquired the manner of a thorough man of affairs.

An altogether unexpected event came, one of the most painful of the young man's life, although it did not alter the upward course of his star of fortune, and afforded him the opportunity to show the world the strength of his resources. His best friend and benefactor, a pattern of physical and intellectual manhood, was suddenly stricken with illness and died. His will bequeathed to George Bleistein the sum of twenty thousand dollars. This, with

his accumulated savings, made him comparatively rich. He had begun with nothing and was now only twenty-three years of age. In the will he was named as one of the executors, thus imposing upon him the new and important responsibility of assisting to settle a large estate according to the terms which the instrument provided. Mr. M'Cune had been wont to estimate the value of the *Courier* property at a million dollars as it stood.

The establishment, employing over four hundred men and women, its business extending over the continent, its affairs excessively complex, was left without a head, save Mr. Bleistein. The situation was peculiar. The duty of the executors, under the will, was to continue the business until such time as it could be closed out or wound up without detriment to the interests of the estate. Public attention of a lively degree, in Buffalo, was naturally enlisted. There seemed a danger that one of the proudest industrial institutions of the city would disintegrate, for it was hardly to be expected that a concern of such magnitude could be sold without great sacrifice, otherwise than by dividing it and selling the separate branches to different parties. And again, who now could keep the business going with profit? Who knew how to conduct it, had the strength, courage and nerve to engineer it, now that the master-hand of the iron-willed man who had built it to its greatest glory was powerless in death? There was Mr. Bleistein, a very young man, physically somewhat delicate; he had profited much by



Mr. M'Cune's friendship; doubtless this had been worthily bestowed, but was the young man equal to the task which now presented itself? A good many folks shook their heads doubtfully, and old business heads, some of them, too. The situation called for administrative ability of the very first order, comprehensive knowledge of the business in all its minutia, energy, tact and address.

Mr. Bleistein came and went his way quietly. He grieved deeply for the loss of his friend. His disposition had never been demonstrative. He had no need to adopt any artificial air of reserve to befit the seriousness of the case. The engines kept in motion, the machinery continued working, the army of toilers staid in their places, tons upon tons of the finished products of the house daily went out, new stock came in, the company's newspapers were issued as though nothing had happened. People began to wonder again—that this quiet young man was evidently able to entirely falsify all the predictions of his incapacity to deal with the emergency. It was undoubtedly a critical time, but the only question was as to the size of the new leader, for the business had been left in perfect running order, with ample work for the season under contract; the several departments under the charge of trusted employes of long experience. So the point to be determined was whether the only available man for the position of general director, because the only one intimately acquainted with the details of the diversified interests at stake, would succeed in keeping the patron-

age, would be able to preserve the standard of the work, wisely dictate the policy of the papers, and so harmonize all conditions that they should redound to the welfare of the concern. How he has succeeded can be best told by the simple record that the business of the *Courier* company for the past year was larger than in any previous year of the history of the institution. Soon after Mr. M'Cune's death Mr. Bleistein was elected president of the *Courier* company.

So the work went on. In a few months all doubts had given way to a feeling of security. The young president, calmly pursuing his course, commanded and received confidence. As time passed, in the course of the adjustment of the estate, he was necessarily much in the society of the fair widow. It seemed almost in the nature of life's affairs that she should become deeply interested in him whose intelligence and judgment was so largely entrusted the care of her material interests, and he in turn could but have the most active sympathy for the charming and accomplished young lady, the span of whose wedded life had been of but a few weeks. In June, 1886, she became Mrs. Bleistein. A brief European visit followed the marriage, after which they returned to Buffalo to reside in their beautiful home on Delaware avenue.

And the great *Courier* establishment is again looked upon in Buffalo as a permanent institution, with its interests concentrated and directed by the youthful leader, who, gentle and genial, and forbearing almost to a fault, has yet the attributes for mastering business affairs of extraordinary weight.

GEORGE FERRIS.

LEGISLATION ON THE COMPENSATION OF MEMBERS  
OF CONGRESS.

## II.

## VI. REPEAL OF THE LAW OF 1816.

It is hardly too much to say that the act of March 18, 1816, was received with a universal yell of indignation. Remonstrances were heard before the bill was sent from the house to the senate, and by the time it had received the President's signature the country was ablaze. Every feature of the law was objected to. The pay was too high; the annual salary was a dangerous innovation; and the retroactive clause was an abomination. The newspapers made the most of their opportunity. Demagogues of all parties soon discovered in what quarter the wind lay, and, falling to work at the party bellows, increased the tempest. The vocabulary of denunciation was exhausted upon congress. State legislatures passed resolutions denouncing the law and demanding its repeal. Petitions of the same character obtained the signatures of nearly every man to whom they were presented. At a public meeting in Pennsylvania, over which one of the supreme judges of the state presided, this toast was received with great eclat: "The \$1,500 law; the receiver is as bad as the thief." In Georgia and Vermont, grand juries actually went through the form of present-

ing members of congress who voted for the bill. In the debate on repeal the following winter, Mr. Johnson said he knew of a man in Kentucky who refused to pay his own note of hand because the payee was in favor of the act. He also related an anecdote of a gentleman refusing a young man permission to visit his daughter until the young man had defined his position on the salary. Roundly to denounce the law, was a *sine qui non* in candidates for the humblest offices. Mr. Johnson declared that the act had "excited more discontented feeling than the Alien or Sedition law, the Internal Taxes of 1798, the Embargo, the late war with Great Britain, the treaty of Ghent, or any one measure of the government from the beginning of its existence." Mr. Hildreth remarks that it attracted far more public attention than the return to specie payments, which was now being agitated throughout the country.\*

Unhappily for the members of the house who had voted for the bill, the new elections came on before the storm had subsided. Many of them, thinking prudence the better part of valor, declined to be candidates for reëlection; others

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\*History, VI., 593.

entered the canvass and were beaten; while of the few who were returned, most escaped defeat by a hair's breadth. Some men disappeared from public life forever simply because they had voted for the hateful salary. All the future triumvirs kept their seats. Calhoun was so strongly assailed that his previous popularity and his extensive family connections were not sufficient to carry him through the contest; he was compelled to exert himself to the utmost upon the stump to secure his reelection. Mr. Webster does not appear to have been affected by the storm. Mr. Ticknor does not even mention the subject in his life of Webster. But in Kentucky, gallant Henry Clay was almost overwhelmed. For the moment his personal popularity and public services went for nothing, and he escaped defeat by a small majority.\*

At this distance many of the phases of the agitation are exceedingly ludicrous. No reasonable man would now think of justifying the public of 1816 in

its excessive violence. Condemn the bill as we may, there is no code of ethics that will warrant us in calling Clay, Webster and Calhoun plunderers or thieves. At the same time it is easy to explain the popular feeling. The law of 1816 sanctioned the first "grab," and the people proposed to let honorable members know what they thought of grabbing. It is true the additional sum voted was small, but that was the day of small things.

The Fourteenth congress came together at its second session with feelings very different from those which animated its members the previous winter. What the emotions of the sanguine Mr. Dana must have been, we can only conjecture. The members who had voted against the law of course complacently said to their wretched fellows, "We told you so." The two houses fell to work to undo the mischief. Repeal was the leading topic of the winter. Some hundreds of pages of the "Annals of Congress" are filled with the debates. It is quite impossible to follow the history of the discussion, or even to describe the different phases that repeal assumed. A paragraph or two is all that can be devoted to the subject.

On the third day of the session Mr. Johnson offered a resolution, which prevailed without opposition, creating a committee to inquire into the expediency of repealing or modifying the law. Two weeks later the committee submitted its report, which was understood to be written, and may well have been written, by Mr. Webster, a member of

\* The Kentucky canvass gave birth to the celebrated dialogue between Mr. Clay and the old hunter. The hunter, always Clay's zealous supporter, now told him that he should support his opponent. "My friend," inquired Mr. Clay, "have you a good rifle?" "Yes." "Did it ever flash?" "Only once." "What then, did you throw it away?" "No, I picked the flint and tried it again." "Did I ever flash but on the compensation bill?" "No." "Will you throw me away?" "No, no," responded the hunter; "I will try you again." We quote this celebrated anecdote chiefly to remark, what is not generally known, that it was cut and dried beforehand. The colloquy took place at a public meeting, and was arranged in advance between Mr. Clay and his interlocutor. It proved a great success, and the story has often been made to do duty since.

the committee. In a spirit of judicial calmness this report reviewed the whole subject and formed the best defense of the law ever made. The following is one of its weighty paragraphs:

At the time of passing the late act, it was found upon inquiry that from the organization of the government to the commencement of the Thirteenth congress (1813) had, on an average of all the years, been in session one hundred and fifty-nine days in a year. For eight years ending with the Thirteenth congress it had been in session, on an average, one hundred and sixty-five days in each year. An easy computation will show that, supposing congress to sit hereafter as many days within the year as it has usually done heretofore, the present amount of compensation, including travel and attendance, will exceed the amount received for travel and attendance under the former law, 38 *per centum*. After the lapse of eight and twenty years, then, congress has for the first time increased the pay of its members. It has increased it about one-third, and no more, although within the same period it has been called upon to raise, and has raised, the compensation of nearly all other officers of government in a far greater proportion."

The report also gave a merited rebuke to the state legislatures that were now flooding congress with resolutions demanding the repeal of the law. This it did by showing that in almost every state the members of the legislature had increased, in many cases doubled, in some trebled, their own pay, during the period in which the compensation to members of congress had remained at its original rate. Besides, the committee was so cruel as to remark that so far as it could learn, these increases had been retroactive. Never was the conclusion of an argumentative paper more unlike the premises from which it was drawn; for the report concluded with recommending the repeal of the bill and a return to the *per diem* system of com-

pensation. The committee understood perfectly that, however it might reason on the subject, the conclusion was foregone from the beginning. The bill accompanying the report was made the special order for the fourteenth of January.

From that time till the twenty-third, repeal received the continued attention of the house. Mr. Randolph moved to make the repeal retroactive, but the motion was strongly voted down. So were motions to fill the blanks with ten, nine and eight dollars. Nor could the house be brought to do anything more than to repeal the law so far as future congresses were concerned. The majority reasoned that the next house had been elected with special regard to repeal, and it was determined to throw on the next congress the responsibility of ascertaining its own pay. Accordingly the sense of the house found expression in a bill repealing the act of 1816 from and after the close of the present session of congress, "*Provided, always, that nothing herein contained shall be construed to revive any act or acts, or parts of acts, repealed or suspended by the act hereby repealed.*" This bill prevailed by a vote of one hundred and thirty-eight to thirty-seven. Again the senate followed the lead of the house. Almost without the pretense of debate, the senate approved the bill by a vote of twenty-seven to seven.

In the house the debate on repeal was thorough, animated, and in some parts heated. It would be difficult to mention a consideration bearing on the question that was not presented. But the



effectual argument was, *the people have spoken!* Only one new topic of much interest was introduced into the debate, viz: the relation of the representative to his constituents. All the various views of the doctrine of instruction—that difficult subject, which has never been reduced to a formula, and never can be—were presented and amplified. In their anxiety to propitiate the people, some members avowed principles that inevitably led to the most dishonorable dependence and subserviency on the part of the representative. A few denied that it was the voice of the people that had been heard, but only the voice of unscrupulous agitators. On the whole, however, the discussions on this topic were in a subdued tone. Even Randolph, who had said at the previous session that he instructed his constituents and did not take instructions from them, and who now spoke contemptuously of “the auction of popularity” set up in the house, agreed that the voice of the real people was imperative and final. Every day the hoarse cry of the demagogue was heard, bidding for popular favor. Mr. Calhoun refused to recede from his previous position, and in a speech weighty and calm considerably increased his influence as a man of power and character. Mr. Clay improved an early opportunity to place himself on the side of repeal. He made a speech characterized by his accustomed grace, the substance of which was that he bowed to the popular will. He thought the outcry had been caused by the salary feature of the law; but when asked by one of his colleagues whether

a salary of five hundred dollars *per annum* would have offended the people, he was silent. But while submitting to the inevitable with such *suavity*, there is reason to think that the speaker really thought the people a hard master. It must not be supposed that the obnoxious law was repealed because the convictions of members had changed. Whatever their theoretical opinions concerning the right of instruction, they hastened to obey the popular voice in the present case. Repeal was the work of the constituencies. A noisy orator in the house proclaimed their triumph in words that must have been offensive to many of his fellow-members. “This might be hailed as a proud day for the people. Their power and influence are portrayed in strong and vivid colors by the sincere repentance and deep contrition of many of those who voted for the law, the sincerity of which was evidenced by their anxiety to be foremost in undoing what they had hastily done last session. He trusted the people would receive the sacrifice now made to their will as an ample atonement.”

#### VII. THE LAW OF 1818.

When the Fifteenth congress came together its members found no law on the statute book giving them any compensation; they must fix it for themselves. To some of the new members this was an unwelcome duty, for they thought, as some of the members of the Forty-third congress thought of the salary fixed in 1873, that while retroactive pay was very bad, the amount agreed upon was not excessive. But the retir-

ing members of the old house had been inflexible on this point. The new house had been elected to speak the voice of the people on the salary question, and it was compelled to speak or go unpaid. By this time the popular excitement had subsided; the debates of the previous winter had exhausted the subject, the house and the country, and the new law was enacted almost in silence. A bill promptly passed both houses, fixing the compensation at eight dollars a day, with an equal amount for every twenty miles of necessary travel. The act was approved January 22, 1818, and was retroactive from the beginning of the session. Here the subject rested until 1856. The lesson of 1816 was sufficient for a whole generation.

Thus far we have been tracing the history of legislation of which the public has little knowledge, and detail could not be wholly avoided. Now we are to deal with laws comparatively recent, and we can discuss them in a more summary manner.

#### VIII. THE ACT OF 1856.

The forty years intervening between 1816 and 1856 saw great changes in the United States. Population increased at the rate of 100 per cent. for every twenty-five years, and wealth in a ratio even greater. The national revenues mounted up to \$60,000,000, while the expenditures kept even pace. Many new states were born into the family of the Union, thereby swelling the upper house of the legislature. The house of representatives increased in size from one hundred and eighty-two members to two

hundred and thirty-three, although the ratio of representation was gradually raised from 35,000 to 93,000. American life became much more elaborate and expensive. Washington took on the rank and airs of a city. It became plain to every reasonable man that the pay of congressmen fixed by the law of 1818 was altogether inadequate. The law of 1816 had become a faint tradition; hence no one need to have been surprised when Mr. Butler introduced into the senate, near the close of the Thirty-fourth congress, a bill for increasing the pay of senators and representatives.

Mr. Butler's bill abandoned the *per diem* system, and named \$3,000 as an annual compensation. As reported back from the finance committee, the bill retained all its structural features, but was considerably modified in details. It proposed a salary of \$2,500 a year, to commence on and after the date of the adjournment of the session, and it fixed the mileage at the old rate for the members who resided within two hundred and fifty miles of the capital, and at six dollars for every twenty miles for all who lived beyond that distance. There was a general indisposition to discuss the question, and debate was mostly confined to questions of detail. Most of the senators favored a considerable increase of salary. It was agreed, as in 1816, that an annual compensation would shorten the sessions; also that the pay must be increased to prevent the legislature falling into the hands of needy adventurers or the monied classes. Attention was called to

the increased cost of living. It was also argued that congress had increased the pay of most other officers of the government, that it had had no increase for forty years, and that its time had now come. Mr. Seward made a short speech in opposition to the measure, in which he said that his rule was never to accept a public office in which he did not expend more than he received. He also said he favored long sessions. It was better to talk out questions than to fight them out. Mr. Collamer, who favored an increase of 25 per cent. on the old rate, briefly recited the story of 1816, remarking, "I think the lesson should teach us something." The unequal compensation resulting from the old rule regulating mileage, attracted more attention than any other one point. While Mr. Weller's mileage was \$5,400 per session, the mileage of members residing near the capital was but a trifle. No one could claim that there was any such disproportion in the actual expenses of travel. But it was argued that the California members were separated from their homes by a month's journey; that they were compelled for the most part to surrender their business; and that they were obliged either to bring their families to the capital, or be long separated from them. These arguments, which were far more forcible thirty years ago than they would be now, were generally considered satisfactory. Still some of the senators thought the disparity too great. Mr. Pugh intimated that he anticipated personal abuse if the pay was increased, and said he wanted it

increased enough, if it was increased at all, to compensate for the abuse. Mr. Pratt desired to know whether the bill, if it passed, would be made a "political hobby," and stated that his vote would turn on a determination of this question. Several senators thought that would not be the result, and held that it would be dishonorable for any party to use it as a political weapon. After some minor amendments the bill passed by a vote of thirty-five to eleven, and went to the house for its action.

How ready the members of the house were for an increase of pay is shown by the eagerness with which they improved their opportunity. When the secretary of the senate entered the hall to announce the passage of the senate bill, he found Mr. Campbell on the floor. Mr. Orr immediately said: "I would be glad if the gentleman from Ohio would yield the floor, so that we might take up the bill which has just come from the senate and put it through." Cries of "agreed, agreed," were heard on all sides. But Mr. Campbell refused to yield, and the bill was not reached, in regular course, until some days later. When it came up, Mr. Orr offered a substitute that put the pay at \$6,000 for each congress with mileage, for two sessions only, at the old rate of eight dollars for every twenty miles; deductions to be made for absences in the ratio that the absences bore to the whole period for which the member was elected, unless said absences were occasioned by the sickness of the member or his family. What was more, the substitute made the increase retroactive from the beginning of the

Thirty-fourth congress. This substitute was put through the house as rapidly as the necessary motions could be made and put. The majority, under Mr. Orr's leadership, refused to consider amendments or listen to debate. When the question was taken, the vote stood one hundred to ninety-nine. No bill of similar character was ever put through either house so hurriedly. But this was not all that was done on that day; the senate also finished the measure. The retroactive feature was objectionable to many senators. Mr. Benjamin stigmatized the bill as a proposition to take out of the treasury of the United States, and vote to members themselves, two or three thousand dollars apiece; and declared that he could vote for no such measure. Mr. Butler thought it more correct for the members to pay themselves for services already rendered than for services which they propose to render in the future. Mr. Jones declared there was no principle involved, but Mr. Bayard thought there was a palpable difference between voting themselves retroactive and prospective compensation—an opinion, by the way, which his son, the present secretary of state, did not, in 1873, hold in common with him. Mr. Iverson appealed to senators to agree to the house amendments, if they really wanted an increase; for, said he, "if the bill goes back to the house it will be defeated." The senate took this advice and concurred with the house by a small majority.

This act caused some stir in the country for two reasons. *First*, some people thought the compensation granted was

too great. On the whole, however, the good sense of the country generally approved the increase. *Secondly*, the "grab" feature of the act was objected to. But popular feeling never rose high enough to compel a repeal of the law, or even a reconsideration of the subject. It must be said, however, to the credit of the legislators of 1856, that they resorted to no tricks or make-shifts to effect the increase. The measure was not crowded into the last hours of the session, or forced upon some necessary appropriation bill. An indelicate thing was done in a manly and courageous way. Once more, this act marks a final departure from the old *per diem* system of paying members of congress. After being voted down by congress in 1795, by the people in 1816, and by congress again the year following, the salary principle prevailed at last. Whether it has been as efficacious in shortening sessions and saving money to the treasury as its friends predicted and promised need not be considered. At all events, there is small probability of its ever being abandoned.

#### IX. THE ACT OF 1866.

Ten years was long enough to bring the next advance in the estimate set by congressmen on the value of their own services. The decade 1856-66 wrought changes in the country vastly greater than those effected by the four decades preceding. Its close saw the country staggering under a vast burden of debt. The nation was clearing away the wreck caused by the war, and it scarcely knew the extent of its obligations. The taxes



annually levied upon the people, for national purposes, reached almost \$500,000,000. The time was inopportune for an increase in the pay of any class or officers under the government, unless the increase were demanded by plain and urgent reasons. Nor was there greater reason for an increase in the case of congressmen than in the case of almost all other officers under the government. Members could no longer urge that their pay was low as compared with the pay of other officers. Relatively it was much higher than it had ever been previous to 1856. It is true that the currency was greatly depreciated—that \$3,000 now was a much less sum than it had been ten years before; it is true also that more expensive habits of living had come in with the war; but the same reasoning applied to all men in the public service. Besides, the currency was appreciating day by day, and congress could gradually restore it to a gold basis. Least of all was it a propitious time for another "grab."

Again the senate took the lead. On the twenty-fifth of July Mr. Henderson offered an amendment to the sundry civil service bill, then pending, providing that from and after the commencement of the congress then sitting, the pay of senators and representatives should be \$5,000 a year, with mileage at the old rate. The amendment was added to the bill by a decided vote. When the bill returned to the house the various senate amendments, including the one on salary, were referred to the committee on appropriations. At the same time the committee was instructed

to report an amendment equalizing the bounties of the soldiers and sailors who had served in the war. It should be remarked that the last measure was obviously just; that it had been some time before congress, and that it had been postponed thus long only on account of the heavy demands on the treasury. The committee reported adversely to the salary amendment, and the house sustained the report by a vote of one hundred and fourteen to three. As the two houses could not agree on several points, the bill, with the several amendments, went to a conference committee, among the latter being the salary and bounty amendments. In the committee the majority of the house conferees withdrew the objections of the house to the former, and at the same time surrendered the latter. The conference report was attacked in both houses; in the senate because the bounty amendment had been dropped, and in the house because that had been dropped and the salary amendment retained. In the former body Mr. Wade argued that it would be invidious in congress to double its own pay and leave the bounties unequalized; while Mr. Sherman replied that the senate had already approved the one measure and rejected the other, that the house had yielded both points, and that it was childish for the senate to hesitate now. He stated farther that the senate conferees had gone into committee prepared to yield the salary increase, but that the action of the house conferees had left them no ground to stand upon. About the same time Mr. Stevens, chairman of the house

committee, in defending the report of his committee at the other end of the capitol, was saying that he and his colleague had yielded to the determined purpose of the senate. He said "they did not think it their duty to let the bill fail." The house refused to approve the work of its committee, and the subject went to a second committee of conference. At last the matter was compromised, the senate yielding the equalization of bounties and the house the salary increase. In the latter body the vote stood fifty-one to fifty, eighty-five members not voting. Several of those who voted "aye" stated that they were opposed to an increase of salaries, but had concluded to yield that point to secure the bounty bill. Besides, it was clear that the increase had more strength in the house than the vote showed. No doubt the representatives were as anxious for an increase of pay as the senators were, but, like certain men of old, "they feared the people."

On the whole, the law of 1866 was an exceedingly objectionable piece of legislation. Passing over the objections to the increase on its merits, it was accomplished in a most reprehensible manner. The measure was forced through in the last hours of the session, under the manipulations of conference committees. How strangely at variance are the two accounts of Mr. Sherman and Mr. Stevens, given at the opposite ends of the capitol! Besides, it was forced upon a great appropriation bill by the senate, thus preventing a fair expression of opinion in the house, and appealing in a most seductive way to

the cupidity of that body. Finally, it was played off against a just and necessary measure—the equalization of bounties. Similar facts constitute the conditions under which some of the most objectionable legislation of our time has been effected. They are conditions that give the bold and unscrupulous an undue advantage over the feeble and vacillating. When they exist, the appeal to cupidity is especially powerful. They stultify the intellect, and cloud the moral vision. Not only so, they put even honest and scrupulous men in a false position. Such men must either vote for a wrong and unnecessary measure or against a right and necessary one. It is easy to say the duty of such men is plain. So it sometimes is, but not always. Most legislation is a kind of compromise—a balancing on the part of the legislator of what he wants against what he does not want—a sort of striking of the balance; and it is often difficult to determine when a vote should be given, and when it should be withheld. Hitherto the compensation of members of congress had been ascertained in a bill separate from all other legislation. Mr. Henderson's manner of proceeding was the discovery of a new device for effecting an increase of the salary when, if the increase stood by itself, congress would feel obliged to vote it down. It was a most unfortunate discovery. It proved the opportunity of the "grabber," and the snare of the unwary. Once more the senate took the lead in accomplishing the purpose of both bodies, thus removing from the shoulders of the

house a heavy burden of responsibility which that body ought always to carry, and which it did carry in earlier days. When the law passed, the attention of the country was so occupied with other and weightier matters that the increase scarce created a ripple on the surface of the public mind. To this day the country has never formed any opinion upon the merits of this act. No man won applause by resisting it, no man obloquy for favoring it. No doubt this indifference on the part of the public smoothed the way for the next step in the same direction.

X. THE "SALARY GRAB" OF 1873 AND ITS REPEAL IN 1874.

On the twenty-fourth of February, 1873, Mr. Butler of Massachusetts offered an amendment to the legislative, executive and judicial appropriation bill, providing that on and after March 4, 1873, the President's salary should be \$50,000, the vice-president's \$10,000, the chief justice's \$10,500, the other justices of the supreme court \$10,000, members of the cabinet \$10,000, the speaker of the house of representatives \$10,000, etc. The part of the amendment dealing with the members of the two houses was in these words:

Senators and representatives in congress, and delegates from the territories admitted to a seat in congress, including senators, representatives and delegates in the Forty-second congress, shall receive compensation at the rate of \$7,500 per annum each, and in lieu of mileage there shall be allowed to each senator, representative and delegate, including those of the Forty-second congress, his actual expenses from his place of residence to Washington at the commencement of each session of congress, and return, to be certified in a bill of items to be filed as a voucher.

The effect of Mr. Butler's amendment was to double the salary of the President, to raise the salaries of the judges, etc., about 25 per cent., and to raise the salaries of senators and representatives about 50 per cent. Mr. Upson, of Ohio, moved to strike out the retroactive feature from the Butler amendment. Its author replied that "every increase of salary of members of congress which had ever been made since the government existed, always included the house of representatives and the senate, in which the measure was made. We are only following the precedent without exception," he said, "for the plain reason we are supposed by experience to have found out our salaries are insufficient, and, finding that out, we increase for our successors as well as for ourselves." The "grab" proposed by Mr. Butler will not here be followed through its tortuous course from the day he proposed it to the day that it became a law; only the major points of the history will be mentioned.

Mr. Upson's motion failed, the vote standing 60 to 76 in committee of the whole, and the Butler amendment carried 93 to 71 on the general count and 81 to 66 by tellers. But, strange to say, when the house voted on the amendment, February 28, the amendment failed, the vote standing 69 to 121 on the call of the roll. A historian of the scene has recorded that "many members changed from aye to no before the result was announced"; the meaning of which fact is, that they were willing to brave public condemnation if the measure carried, but not willing if it

failed. General Butler was one of those who changed their votes, his motive being to move a reconsideration. And, strange to say again, such a motion carried the very next morning by a vote of 104 to 79. Various attempts were made to substitute \$6,500 for \$7,500, but these all failed. Finally, another vote was reached, and the Butler amendment carried, 100 votes being cast for it and 99 against it. When the increase of salaries came before the senate, a motion was made to strike out the part relating to senators and representatives; also a motion to strike out the retroactive features; but both failed by decisive votes. The senate had thus approved the principle of the measure, although it had not acted on it directly. By this time as many as sixty-eight points of difference between the two houses had accumulated; it was March 1; congress adjourned in three days more; and the bill, with all the pending amendments, went to a conference committee. Each house had declared in favor of the increase. All the senators and two of the representatives on the conference committee were in favor of it; moreover it was held that the history of the amendments in the two houses brought it within the rule that a conference committee cannot exclude from their report any proposition that both the houses have approved. Accordingly the committee reported unanimously in favor of the Butler proposition. The report carried in the house by 102 votes to 96, in the senate by 36 to 27. The house acted finally on the bill less than twenty-four hours before the close of the ses-

sion, the senate less than twelve hours, and President Grant signed the bill not more than an hour or two before the close of his first term. A historian who sat in the house through all the acts of the drama, said: "The vote on the report of the conference committee was no adequate test of the sentiment of the house on the salary question." He goes on to explain that many other questions of great importance were involved, even the fate of the legislative, executive and judicial bill itself, and so an extra session of congress; and that some voted for the bill with the "grab" in it as the less of two evils. He continues:

Though the vote in the house shows a majority of but six in favor of the report, yet there were present and not voting 15 members, who, an hour before, had voted on the motion to order the main question on the adoption of the report; and 9 of these 15 had on direct votes in the house voted in favor of the increase of salaries. Besides this, 19 of the 96 who voted against the conference report had on former votes voted in favor of the increase when that was the sole question at issue.

Members who had no other responsibility than the casting of a vote were quite willing, after having forced the amendment upon the bill, to drop out on the final vote, or vote "no," and thus shirk the appearance of responsibility for what they had done.

These facts show how much dishonesty and cowardice are sometimes found in a great legislative body. The objections to the increase of salaries for senators and representatives were two in number: The increase itself was uncalled for and unjust, and the manner in which it was carried through congress was most reprehensible.

All winter investigating committees had been busy unearthing the history of the Credit Mobilier, particularly its re-



lations to congress, and the public mind was in an excited state. The increase of their own salaries by the senators and representatives seemed, for the time, to destroy the last bit of popular respect for and confidence in the national legislature; and the thunder of indignation that rolled over the land will not soon be forgotten by those who heard it. The public at once fixed upon the increase the expressive name of "grab," and when we remember that the men who voted it had all received their pay to date, and had receipted for it in full, we can hardly call the name a misnomer. All through the recess of congress the agitation went on. Warned in time, some members declined to draw the money from the treasury; others who did draw it paid it back again; some of both classes actuated by worthy motives, and some impelled by public opinion. The political fortunes of more than one man were wrecked in this storm. The agitation of 1873 was 1817 over again, only a little less violent. The Forty-third congress had hardly convened, when propositions to repeal the increase of salaries made for senators and representatives began to be brought into either house. First and last, there was a considerable number of these, differing more or less in minor features. The members hesitated; what pleased some did not please others; action was delayed; and many finally began to think that the majority of both houses of the Forty-third congress would be very glad not to repeal the increase at all, but would be glad to receive the extra money that the Forty-second con-

gress had voted them. The whole subject of paying the civil employes of the government was canvassed from end to end in both houses. When it began to appear what the temper of the houses was, the indignant voice of the public began to be heard again, demanding a repeal of the obnoxious legislation. So at last, January 20, 1874, a law was enacted that restored the salaries, except those of the President and justices of the supreme court, to the former standard; the increase of the President's and the judges' was retained.

#### XI. FINAL REMARKS.

Many reflections suggested by the history given in this and the preceding article have been made by the way. Three or four more will be here in place.

1. The pay of members of congress has been increased in much larger ratio than the pay of either the executive or the judicial branches of the government. Before the year 1800 the pay and mileage together could hardly have averaged more than \$1,000 a year. It is now \$8,000 and mileage. The President's salary has been increased from \$25,000 to \$50,000; the chief justice's from \$4,000 to \$10,500; the cabinet officers from \$3,500 to \$8,000. It is easy to cast the percentages.

2. Whether the explanation of the fact stated above is (1), that the pay was fixed too low in 1789 and onward for twenty years; or (2), that the labors and expenses of senators and representatives have increased more rapidly than those of judges and cabinet offi-



cers; or (3), that congress has done what it has done because it had the power to do it; or (4), all of these circumstances combined I leave to the reader.

3. The whole history, as drawn out, is a convincing argument in favor of the amendment to the constitution proposed by the first congress, viz.: that no increase of compensation should take effect until an election of members of the house of representatives had occurred. But it is almost needless to remark that no such amendment as that could now be carried through either house of congress.

4. The pay of members of congress from the setting up of the government under the constitution has been as follows: From 1789 to 1815, \$6 a day and mileage (senators a dollar more for one year); 1815-17, \$1,500 a year; 1817-1856, \$8 a day and mileage; 1856-1866, \$3,000 a year and mileage; 1866-1872, \$5,000 a year and mileage; 1872-1873, \$7,500 a year and traveling expenses; 1873-1887, \$5,000 a year and mileage.

5. We have had a glimpse of the manner in which the country has increased in extent and the government in complexity in eighty-five years. Instead of the two houses containing 91 members, as in 1790, they now contain about 400. Constituencies have greatly increased in size. Instead of 33,000 inhabitants, a representative's district contains four times this number. Besides, the government has become much more national in its character. As a consequence, the repre-

sentative is farther removed from his constituents. He belongs less to his state or district, and more to the nation. It is undeniable that the sense of responsibility has considerably declined. And then public business presses with a weight formerly unknown, while the rules of both senate and house have become cumbrous and complicated to a wonderful degree.

At the close I give four or five paragraphs from a short speech made in the house of representatives December 11, 1873, by President Garfield, when the question of repealing the increase of the previous session was pending. He is replying immediately to Mr. Stephens of Georgia.

All that the gentleman said in regard to the relation of public opinion to representative men will, I presume, be cordially concurred in by those who heard him. All that he said in the way of contrasting the true demagogue of the ancient Greeks with the sham demagogue of our time, will certainly find an echo in the breast of every thoughtful man. The real leaders of the people—they who give voice to the best thoughts or aspirations of their countrymen—are immeasurably above those who consult public passion only to cater to its worst tendencies. It is a high and worthy work to study public opinion, for the purpose of learning how best to serve the public good; but to study to learn how best to serve ourselves is base.

It is important that we understand what we mean by public opinion. It is not an infallible standard of right, for it is sometimes wholly wrong; its judgments are frequently revised and reversed by its own consent; but it is true that, after a full hearing, public opinion finally adjusts itself on a basis which will be practically just and true. He greatly errs who calls all the passing and changing moods of the public mind the fixed and final verdict of the public judgment. The public opinion that teaches its most valuable and impressive lessons resembles the ocean—not when lashed by the breath of the tempest, but when seen in the grandeur of its all-pervading calm.

The man who takes the dash and roar of its wild waves on the rocks as his symbol of public opinion, will not only fail to learn its best lessons, but may find himself wrecked by its breakers. But the sea in its hour of calm, when the forces that play upon it are in equipoise,—when its depths are unvexed by tempests,—is the grand level by which all the heights and depths of the world are measured. And so public opinion, though it may at times dash itself in fury against events, and against men, will at last settle down into broad and peaceful calm, and will mark the level from which we gauge our political institutions, and measure the strength and wisdom of men and of parties.

While recognizing, thus, the general justness and the almost omnipotent power of public opinion in a government like ours, it is equally important that the individual man shall not be the servile and unquestioning follower of its behests. We may value it as a guide, we may accept its lessons, but we should never be its slaves. There is a circle of individual right within which every man's opinions are sacredly his own, even in defiance of public opinion, and which his manhood and self-respect demand that he shall never surrender. But there are public questions like that which we are to-day considering, on which the voice of public opinion has a right to be heard and considered by every representative in the national legislature.

Now, if we were legislating for the ideal republic of Plato, I do not know that a wiser plan of compensation could be found than that proposed by the

distinguished gentleman from Georgia. If we lived in a world where the highest power was the best paid, his scheme would be perfect, and his argument unanswerable. But so far as I have studied life, exactly the reverse is the accepted rule. The things that have the highest marketable value in the world, as we find it, are not the things that stand highest in the intellectual or moral scale. One of the brightest and greatest men I know in this nation—a man who, perhaps has done as much for its intellectual life as any other—told me, not many months ago, that he had made it a rule of his life to abandon any intellectual pursuit the moment it became commercially valuable; that others would utilize what he had discovered; that his field of work was above the line of commercial values; and that when he brought down the great truths of science from the upper heights to the level of commercial values, a thousand hands would be ready to take them and make them valuable in the markets of the world. [A voice, "Who was he?"] It was Agassiz. He did not enter upon his great career for the salary it gave him, for that was meagre compared with the pay of those in the lower walks of life; but he followed the promptings of his great nature, and worked for the love of truth and for the instruction of mankind. Something of this spirit has pervaded the lives of the great men who did so much to build up and maintain our republican institutions. And this spirit is, in my judgment, higher and worthier than that which the gentleman from Georgia has described.

B. A. HINSDALE.

## JOSEPH THATCHER WOODS.

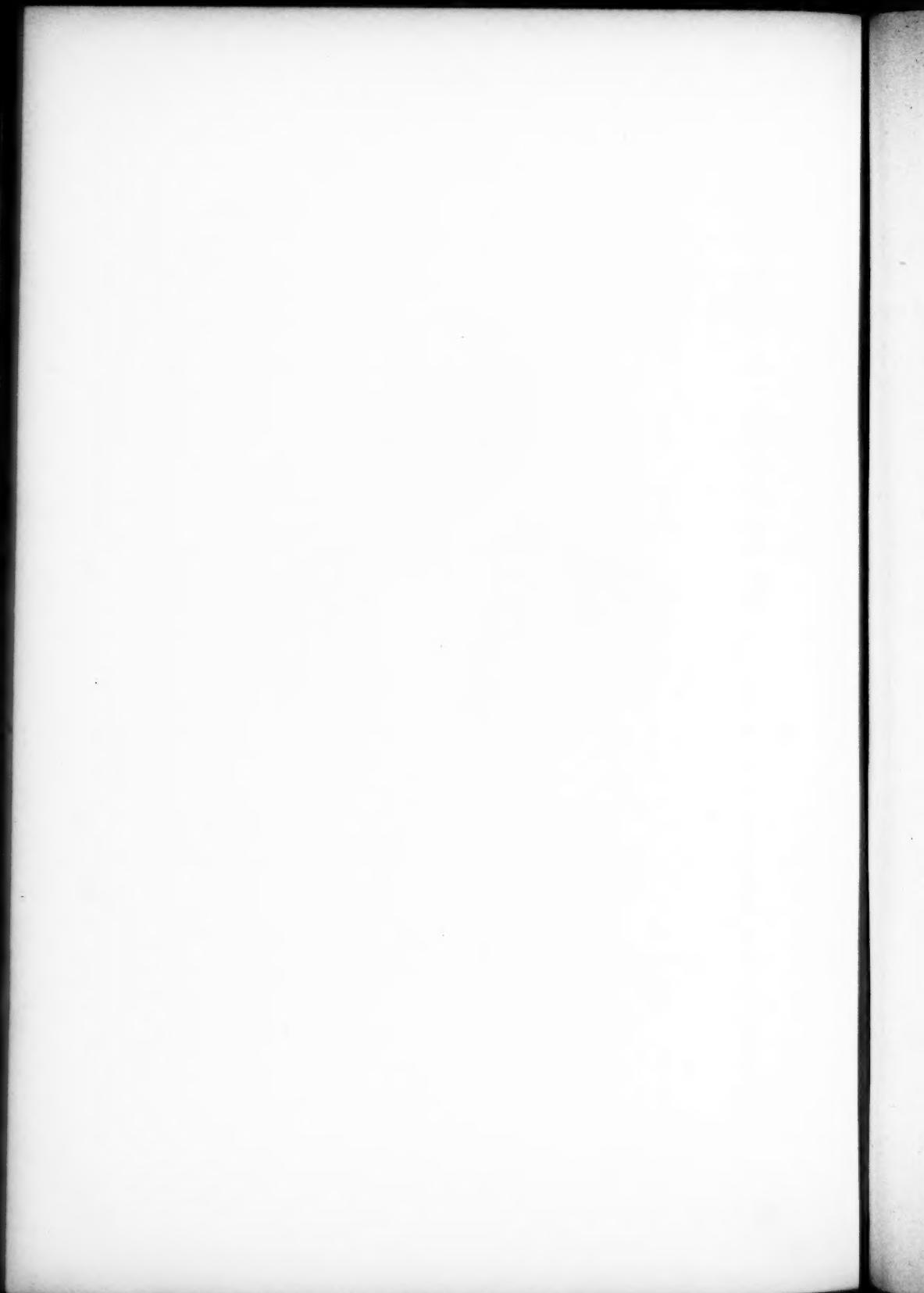
JOSEPH T. WOODS, M. D., was born in Columbiana, Columbiana county, Ohio, March 16, 1831. Dr. Woods, on his father's side is of German extraction, and partakes of the robust, vigorous physical characteristics of that race. The name was originally *Woltz*. Jacob Woltz, the great-grandfather of Joseph, having emigrated to America from Germany about the middle of the last century with two other brothers. He lived with a family of Quakers, adopted the belief of that sect, and changed his family name to that of Woods. The two other brothers, however, retained the original surname. The mother of Dr. Woods was Rebecca Thatcher, a descendant of Anthony Thatcher, who came from Salisbury, in county Wilts, England, and settled in Marblehead, Massachusetts, having arrived in Boston in June, 1635, with his second wife, and four children by his first wife. Among the children was one named Peter, and this name has been perpetuated by a son Peter in every family of Thatchers to the present generation; Peter Thatcher, for many years an active and intelligent business man in Cleveland, being in this same line of descent. Of the fifty-three persons who came in the ship with Anthony Thatcher, twenty one were drowned in the August following their arrival. The occurrence was sad and lamentable in the extreme. The twenty-three persons were returning in a pinnace from Ipswich to Marblehead and their boat was wrecked on a ledge of rocks off Cape Ann, Thatcher and his wife alone escaping death from the shipwreck. The Thatchers were a family of much prominence in the early history of Massachusetts, and their descendants are of high standing and usefulness to the present day. Dr. Woods' education had its beginning in the district school of Randolph, Portage county, Ohio. He was brought up on a farm, an occupation which has furnished to the county many of its most worthy citizens. A large proportion of his time and services were needed on the farm, but by close and assiduous study and reading, his acquirements became very considerable. Early in life he had a leaning to the medical profession and commenced the study of medicine with Dr. Joseph Price, the family physician. This was undertaken under great disadvantage, and with much of self-denial, as he was wholly without means; but he met the necessary expenses by extra work



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*J. Woods M.D.*





in harvest time and by teaching school in the winter. Through economical habits, energy and industry in earning and saving an honest penny, he was able to attend lectures in the medical department of the University of Michigan from which he graduated and commenced practice at a "cross-roads" in Hancock county, Ohio. Here his good judgment and professional learning and ability were soon apparent, and he met with marked success in his calling, building up a practice and reputation remunerative and popular. He resided here in love with his profession and the entire community until 1862, when he entered the army as surgeon of the Ninety-ninth Ohio volunteer infantry, commanded by Captain P. T. Swaine of the United States regulars. This regiment was afterwards consolidated with the Fiftieth Ohio volunteer infantry, the doctor still continuing as surgeon. It was the lot of this regiment to be almost constantly at the front and to be engaged in active service and noted campaigns, particularly that of Atlanta, where its usefulness and the bravery of officers and men were alike conspicuous. The doctor's skill and efficiency as a surgeon soon became widely known; and he was permanently detailed as one of the operating surgeons of his division. He was also much of the time in charge of hospitals at the front, as well as surgeon of various posts. During the last year of his army life, which ended only with the close of the war, he was on the staff of General Cooper and General Scofield. Returning home to Toledo from the army, he at once entered upon a large and profitable practice. Soon after this, he was appointed to the chair of physiology and histology in the Cleveland Medical College at Cleveland, O. This position he filled, lecturing also frequently before the college for about six years, when he resigned on account of ill health, caused by the demands of his practice and the extra tax on him by traveling back and forth between Toledo and Cleveland in the discharge of his duties in the college at the latter place. His associates and acquaintances in the Cleveland Medical College regarded him with the highest favor and esteem for his learning and ability, as well as for gentlemanly and courteous bearing and demeanor while he was connected with that institution. In Toledo, where he has been permanently located for more than twenty years, he is looked upon as being one of the most successful physicians and surgeons who have ever resided there. His services are in great demand, and he seems to have in unusual degree the esteem and respect of his professional brethren. As a surgeon he ranks high; in fact, it may well be doubted if there is any one more eminent in this department in northern Ohio. In this line of practice he has originated a number of

devices and appliances which have been found to be of great practicability and to meet important demands in the treatment of certain cases. For skill in this art he was awarded a certificate for a splint for the leg and thigh at the international exhibition at Philadelphia in 1876. It is especially valuable for facility of application to simple or compound fractures of the lower limbs of persons of different sizes or ages and upon either side of the body. Also for subsequent firmness of support, convenience of making examination or dressing, or effecting and securing changes of position of the limb desirable for comfort or treatment. The life of Dr. Woods is a good illustration of what energy, industry and integrity of purpose and being may accomplish for one. Many a boy and young man with no better advantages than he could claim in younger life, would have been discouraged and dropped out by the wayside, but it was not in his nature to be thwarted in his plans, or to weaken or faint in the struggle, however hard and hot it might be,

until the objective point in his life had been reached. That object was not alone the securing the means of support, "to breathe the vital air, consume the fruits of earth and doze away existence," but to make existence agreeable and pleasant to himself and also to be of use and service in his day and generation to mankind. There is, perhaps, no calling more worthy, useful and important than that of the physician and surgeon. Coupled with his high standing as such, is the high level he occupies as a man and citizen. He is strong and compact physically and hale and hearty in nature and disposition. He is sensible, intelligent and business like, takes a deep interest in everything relating to public matters, and avoids no responsibility or duty either as a public or private citizen. In politics he is a Republican of the staunchest and most consistent kind, and has never sought office, being amply content and satisfied to pursue with steady step and tread the onerous pathway of his chosen profession.

D. W. MANCHESTER.

### RISE OF THE ANTISLAVERY SENTIMENT ON THE WESTERN RESERVE.

I HAVE been asked many times to account for the rise of the antislavery sentiment among the people of the Western Reserve. I answer in a general way, that the causes which produced the same sentiment in England, and the northern part of the United States, wrought the result in northern Ohio. This conceded, I am told that the rise in this sentiment—a change from a unanimous proslavery, to a nearly unanimous antislavery sentiment, was phenomenal in time and extent, in this section of the state, defined by its boundary, and effective in changing the relations of political parties in Ohio and largely influencing national results. That whereas “The Reserve” was quite unanimously Whig, it became almost as unanimously Free Soil in a single year.

How is that explained? I reply a known fact of the history of the people of that narrow section, now a thing of their past. The Reserve was for many years seemingly the residence—the home of the various *isms*, the vagaries, *mental ailments*, many called them, of a people, noted throughout the land for this distinctive feature, so that whoever had a hobby elsewhere rejected, rode it straightway to the Reserve, where it was quite certain of hospitable pasturage and shelter. It was this pervasive tendency to new notions, acting on the deep moral sense of these descendants of the Puritans—themselves Puritans, two removes from the English home—that produced the political phenomenon of 1848. The causes are to be looked for in the nature and character of the



people, and require a brief study of this folk, with some mention of its history and western surrounding, the defenselessness from its own illy-disciplined mental activity.

The Reserve is so much of selected New England, transferred without the gentry and clergy, in the first quarter of this century, to the free wilderness of the west, to develop under such limits, such restraints, as inhered in the people as individuals and communities, thus segregated in their new conditions and surroundings.

That my means and motives may be justly estimated, a word of myself. The youngest son of one of the earliest Scotch-Irish Presbyterians settled in western Massachusetts, wedded with the youngest daughter of a Welsh Merri-  
rick. A younger son of that pair—Anglo-Saxon—I was carried to the Western Reserve in 1817, when a year old. Until my nineteenth year, when I walked away from the little Western Reserve college at Hudson, to the lower part of the state, I never saw more of an Irishman than were my father and brothers, never heard the brogue, nor a word of German. There are now in Ohio townships and towns as purely New England as can be found in any of the parent states, with words and usages lost in the older homes. The town of Burton,

which early produced a chief-justice and a governor, is now such a township.

The third Stuart king in 1662 made a grant to certain patentees of a strip of territory between the forty-first and forty-second and 2" parallels stretching westward from the Narragansett bay region indefinitely, sweeping across New York, Pennsylvania—to the mythical "South Sea" of that time. This grant, none too good, inured to thrifty Connecticut. You know she planted her Westmoreland, in Pennsylvania, and it was represented in her state legislature. She fought for her possession, which by a congressional commission was finally awarded to Pennsylvania. The westward lands were claimed by New York, Massachusetts and Virginia. Each of these relinquished her claim to the infant republic during the old war. Connecticut brought herself to this concession in 1786, being permitted to reserve to herself her claimed breadth for one hundred and twenty miles west of the west line of Pennsylvania, bounded north by Lake Erie and south by the forty-first parallel, sixty-two miles in width. The envious lake by the southern trend of her westward-going coast line robbed her of nearly a third of her acres, which constituted an area of over seven thous-

and square miles, her dry land exceeds somewhat that of Connecticut, being about five thousand square miles—while that of the mother is set down at 4,720—and composes the territory of the eleven northeastern counties of Ohio, and a larger share of another—the county of Mahoning. Their present population is about six hundred thousand quite equal to that of the parent, Connecticut. The state sold the most of her land to the Connecticut Land company, a syndicate of Connecticut and Massachusetts capitalists for \$1,250,000. Later she relinquished her sovereignty to the United States, and the region became part of the northwest territory, and subject to the ordinance of '87, and the laws of the United States.

The Connecticut Land company surveyed its domain into townships five miles square, divided its lands and dissolved; and each sought purchasers. Thus nearly four million acres of land, in the wilds of the remotest west then known, were placed on the New England, New York and Pennsylvania markets, and there began the first great western movement of the American people, along the parallels of latitude which rule on this continent.

Two or three points were occupied in 1798.

It may be noted that ten years before, General Rufus Putnam and the Ohio company began the settlement on the Ohio and Muskingum, built Marietta, and ultimately organized the county of Washington, and so, later, John Cleves Symmes of N. J. began at North Bend; yet that movement, however important,

had little influence upon the immediate fortunes of our Western Reserve, nor did the pioneers there so long and distinctively preserve the New England characteristics. Loosely speaking, the Reserve was six hundred miles away—west of Albany, a wilderness. A few of the very first made use of the rivers and lake. Some traversed Pennsylvania and approached the new land by way of Pittsburgh. Six weeks was the usual time for the overland journey. Some rested with kindred on the "Holland Purchase," of western New York.

Changes have been so great, that the time of this second Puritan exodus seems already ancient, and it is now impossible to correctly apprehend the state or stage of the then culture of the average man, the means and advantages of a common education, the degree of the middle-class man's intelligence, or the extent of his information. We shall certainly overestimate the popular intelligence and channels of information of that day.

The original religious movement, producing the essential Puritan, is to be kept above the horizon—a movement so profound and lasting as to change somewhat the external forms of English civilization. Nor must we forget the character of the emigration, that made our own New England states. The first emigrants sought freedom for their own religion. This, strong enough to compel them to leave their pleasant English homes for the perils of the ocean and lifelong hardships of a savage land and climate, would compel them to exclude from their association, men whose

teachings trenched upon the seclusion which they sought. It was useless to flee—escape from these obnoxious influences, if the men who exercised them might mix with and adulterate, offend and corrupt. The freedom from all intrusion which they sought at such expense was essential. Let these corruptors, schismatics and heretics, keep clear of their borders. Go elsewhere by themselves as had they.

It is true that in the lapse of time, the intense spirit which fused and changed men, their habits of thought and life, to Puritans, subsided; and left an outer crust of cant, and austere sour formalism, the derision of the wits and scoffers of the older times, as of the wonder and amusement of ours; but the real change of character, nature, spirit—the views of life, its purposes, the reverent estimate of a supreme ruling cause, became fixed, and though changed and modified, still form the characters and influence the minds and morals of the descendants of the Puritans—probably alway will.

The tendency of Puritan teaching and training, was less to produce external forms, only as these were the unconscious expression of the inner man—the essential self, moulded by centuries of unyielding pressure, upon the strong tenacious English nature; compounded of ancient Briton, Saxon, Dane, and the better Norman, wrought and kneaded by the formative centuries of English history.

It will help to an apprehension of the newness of the time of this western movement to state that at its commencement, 1800, the population of Massa-

chusetts was 422,000; Connecticut, 251,000; Ohio, 45,000, then wholly along the Ohio river. Boston then had 24,000. New Haven, 4,000—Hartford is not mentioned—Cincinnati had 750, Cleveland does not appear in that census. It had 547 in 1810, and 1,076 in 1830. These 673,000 people of Massachusetts and Connecticut are to furnish the emigrants, who will people the new western domain, and as these two states, out of all proportion to their numbers, influenced the destinies of the republic, so will these westward going sons and daughters, aided by those planted along the Ohio, out of all proportion, influence the fortunes of the new state that is to be, and the nation through it.

The world over, the first occupants of a given soil, unless exterminated, fix for time—for all time, many of the prominent features and characteristics of a people. Even when conquered, the older peoples saturated of the soil, in turn overcome and assimilate their conquerors. Ireland makes Irishmen of all her invaders. Massachusetts will forever remain Puritan, notwithstanding Mr. Brooks Adams and his emancipation of Massachusetts. So the Western Reserve once known as "New Connecticut," though it drew nearly one-half from Massachusetts, will forever remain so much New England.

Kentucky, Tennessee, as much of Western Pennsylvania, were peopled by borderers from Virginia, Maryland, North and South Carolina. Their inhabitants still bear the traits of their parentage.

The Ohio company peopled its mil-

lion and a half acres with whatever came to hand, who could be induced to cast their fortunes with it. Soldiers, citizens, men of broken fortunes, adventurers, drawn mainly from New England, as were the followers of Judge Symmes, to his larger acquisition.

The settlers of the Western Reserve were, without exception, self selected, each prompted by his individual judgment of what was best for himself. The state, the Connecticut Land company, had no hand in this colonization, not more than two or three of the company ever visited its domain, nor was there any concert of action among the settlers. Each secured his new land as he could, made himself ready and pushed westward on his own hook.

These were of the average middle class, nearly all husbandmen, few from towns, few mechanics, no merchants, a few physicians, scarcely an educated clergyman, or lawyer, very few church members, and very few men of academic education. The great middle class, younger middle-aged men, with young vigorous wives, and many children, men of peace, remembering the revolution and Shay's rebellion, with traditions of the old Indian wars, and a few soldiers of 1812, with no special prejudice against Indians or Negroes.

I must think there was then quite a wide belief in witches and a general faith in ghosts. I speak from memory of my childhood neighbors. Fortunately there was no stock of either commodity in the Ohio woods—in fact, no folk lore of any kind. So men came as they were, to make the new genesis, en-

tering the woods as they left the old communities; and to know with certainty the sort of folk they were, some reference must be made to those communities and their status in them, at the time of this exodus.

We know that men removed from home and social restraints act with more or less license; that men with their wives and children on excursions throw off home usages. We do not know exactly what they will do in remote cabins in the woods, save turning to the earth, forest and streams, for food, clothing and shelter, at first hand. We do not expect they will at once build churches and endow colleges. They will for long, have no idea of consciously building a state. Indeed, they will never think of that until it confronts them, having first attracted the notice of outsiders. Another thing—the last ever produced by colonies—they never will think of literature. Colonists last of all escape the literary vassalage, and this fully accounts for the supposed late appearance of an American, or a literature of any sort, on the new continent; and is now mainly the product of the older of the United States. This should be an answer to foreign complaint of us on this *count*.

We know our pioneer was educated on Noah Webster's three raids on the common language, parts first, second and third. That he used Pike's or Adams' arithmetic, and ciphered to the "Rule of 3, direct." That he talked in this vernacular: "I was *stan'in* by the *winder*, 'an see a *feller* in the *medder*, by the big *holler*. He went on a *leetle funder*, an' I hearn 'im *hollar* to Grany Gaf-



*fiel*," which his grandson would render thus: "As I stood by the window, I saw a fellow in the meadow on the bank of the valley. He went a little further, when I heard him halloo to Grandma Garfield."

It is needful to know further the manner of man he was. There is caste to be named,—the church and clergy; the catechism of the Westminster divines, the New England primer, with its shorter formula. As more familiar with I have the people of Massachusetts in mind, as representing New England. Originally they were there divided into three well-defined classes. The great commonalty, the gentry, and clergy.

The commons were of the pattern of the fiery Ruperts' Cavalry, Cromwell Ironsides; not peasants — yeomen. There never was a peasantry in the New England of that day.

The gentry were the younger sons of noble houses, shading downward to the commons. Above all in actual power, elevation of position, and personal consideration, stood the clergy. Until 1664, the government of Massachusetts was a pure theocracy, administered by the clergy in fact. It was the overturning of this reign in English chancery, that the latest historian of the early commonwealth, celebrates as "The Emancipation of Massachusetts."

No characteristic of the strong tenacious English nature stands out in higher relief than inbred reverence for class distinctions. This, in its force and strength, the English brought with them to America. It took at least two centuries to change an Englishman to

an American. The stage he had reached in this progress, toward the close of the last century, was marked, when we saw stout John Adams, the vice-president elect, proceeding to the national capital, escorted by a troop of cavalry. That the American predominated, when Jefferson was inaugurated President, was at least indicated by the absence of outer trappings. That there is a resting-place for class distinction, in the present weakness of our common nature, we are compelled perhaps to admit.

Now, at the end of this second century of the metamorphosis of the Englishman, we have some thousands of this commonalty, transplanted—so many—such a quantity of New Englishmen into the Ohio woods, carrying so much of New England as inherited and adhered to them, without the church, the clergy and with but scarce a touch or tone of this gentry. A voluntary migration, not in masses, is, an unconscious natural selection of the fittest. None but the strong, enterprising, intelligent, and hardy, brave enough to meet and conquer difficulties, would adventure it.

What might we expect from a new community, in a new country, thus constituted—remembering that each individual had, in the ordinary measure, the shrewdness, inquisitiveness, longheadedness, attributed to the Yankees, and that the prevailing disposition to argue everything, growing out of the enquiries of the earlier centuries, had not disappeared from among the eager asking New Englanders—east or west?

As mentioned, the territory of the Western Reserve was surveyed into

townships of five miles square. By the organic law, ten freeholders, citizens of the United States, might affect a political organization. Its government was vested in three trustees—the "selectmen." There was at least one justice of the peace, a constable, overseers of the poor, and fence viewers. The trustees might erect road districts, with each a supervisor, divide the township into school districts, with directors—a *quasi* corporation—an act of congress gave certain sections of public lands, off the Reserve of course, to each township, for school purposes, and so the township became a little municipality.

I early came to note the marked difference in the characteristics of the people of the townships, essentially one people, caused by these political lines, noticing with a capacity to wonder at it, a difference emphasized somewhat by the origin of the first settlers, as coming from Connecticut or Massachusetts. Take the county of Geauga, bounded north by the lake, and running southward thirty miles, six townships long and four broad. Newbury, of which I became a resident as above, was the fifth south from the lake, was settled by Massachusetts, as was Auburn, south. Burton, east, came quite bodily from Connecticut, as did Claridon, north of it. Monson, our northern boundary, was named for my native Monson, and settled late, while Russell, west, was for long "The West Woods." As a general rule, a majority of the settlers of a given township were from one or the other states,

and seldom in nearly equal numbers from both. Burton and Claridon brought the Presbyterian church with them, Newbury and Auburn did not. As a general rule, I think, more members of the typical church, by far, were emigrants from Connecticut, and very few from Massachusetts. Austinburg, in Ashtabula county, and Hudson and Aurora, in Portage, were settled from Connecticut, and were noted for early piety, while Mantua, of Connecticut, had next to no church. I very well recollect that the pastors of these churches were always spoken of as priests, as "Priest Humphrey," "Priest Seward," "Priest Fenn," etc.

Take the early settled townships through, I presume not a fifth had a germ of the church of the parent states. A man with settled religious or political notions is less hospitable to new ideas of their classes. Members of churches fenced around are conservative. A well educated man, enlightened, is less approachable. Self-educated men, full of self-gratulation, never so well know whether they have the latest-approved and their mental armor may leave parts entirely exposed. So the presence of educated men helps to secure a given community from notions set free, floating on the popular breath, as pinioned seeds are wafted by the winds. Nineteen-twentieths of the emigrants were not members of the church—of any church, were not educated in any good sense, had no friends who were; were mentally active, curious, inquisitive, argumentative, self-sufficient and intelli-

gent. The newspaper world was non-existent, as was the present world of books.

We had two kinsmen, coming from our older Monson, of academical acquirements, which then meant Latin and some Greek. We mustered 'Rollin's Ancient History,' 'Belknap's History of Vermont,' a huge volume of the wars of the Turks, of which Scanderbeg was the hero; 'Morse's Universal Geography,' two volumes, in which Lake Erie was described as so thickly grown with giant lilly pads, and infested with water adders, as to render navigation difficult and dangerous. There was 'Edwards' on the Will,' a volume of 'Elhanan,' 'Winchester's theology,' 'The Wonders of Creation,' 'The British Albion,' in which the long forgotten Dela Cruska, Anna Matilda and Hafiz disported themselves.

Last of that howling host that once were Bells,  
Matilda snivels yet, and Hafiz yells.

There was 'Fortune's foot Ball'—the middle of a three volumed 'Mysteries of Udolpho,' 'The Female American,' 'Charlotte Temple,' 'The Exiles of Siberia and Constantine and Pulcherry.' My childhood was a long tussle with these—the 'English Reader and Preceptor.'

Ecclesiasticism had lost its hold in a measure in Massachusetts and Connecticut. The slavery of the Sabbath remained, with much of austerity of form. New light, new ideas, were set free in the east, and men—the thoughtful ones—bore some rays of it west, as nearly all were glad to escape the servitude still resting upon New England. Save here and there, where was a group of the

church, sufficiently strong to secure a clergyman, the new settlements for long intervening gaps, rested under so-called darkness, in which men ran wild and free in thought and action.

It is a curious fact that, for many years, the Methodist-Protestant Episcopal made little impression on the sober, grave minded Reserve, while in many townships, the Protestant Methodists were more cordially received. So of the unlettered Baptists—their churches were few and scant, while the Free-will Baptists made ready foothold. Deism, Unitarianism, in at least two forms, Universalism and Universal Restoration, were largely prevalent. Its power of organization is small at the best. Men who do not believe in buried treasure seldom organize to not find it. Fear is yet the greatest motor in religion. Men will not combine to avoid the hell they do not believe in, and it may be questioned whether that no more to be named religion was not exploded prematurely.

In 1828 or 1829 came the Campbells, father and son. The younger, Alexander, the most remarkable preacher and controversialist of his day. Of the Scotch seceders, educated at Glasgow, like my own Scotch race, he came through Ireland. An enthusiast and a logician, with remarkable personal advantages, fervently believing that the teaching of the Gallilean peasant was also addressed to the Puritans of the Reserve, he came to preach it anew, as never there before. The orthodox churches took the alarm. The Baptists were torn and scattered. Rev. Beriah Green, then of the Western Reserve col-

lege, went forth, an open air preacher. It was the great thoughtful—the non-professing laity, in whose minds and memories lay the Christian traditions of their mothers, of whom came Mr. Campbell's principal following. He not only won his countryman, Walter Scott, already in America, Sidney Rigdon and Hayden from the Baptists, but hundreds and thousands of leading, vigorous-minded young middle-aged laymen, of whom came many, soon to be distinguished evangelizers. One of the Haydens, in a well-written book of 500 pages, has told the tale of the rise of the Disciples' church on the Reserve, where they early established one of their thirty or forty colleges.

Then in 1830-1831 came the Mormons. They soon captured Rigdon, if he was not fore-pledged, and lit down first in Hiram, in Portage county. The famous Johnson miracle won Ezra Booth from the Methodists and stout Symonds Ryder from the Disciples. As also the Snows, Lorenzo the apostle, and Eliza the poetess—a wife of Brigham Young. This inroad brought Alexander Campbell again upon the Reserve.

It has come to be matter of observation, that in the progress of the race, where a new step is in order, the premonitions appear in the thought and words of different men widely asunder at the same time.

The northern states had abolished slavery, though under the gradual scheme, and slaves still lingered in most of those once permitting it. The agitations in England beginning toward the close of the last century culminated with

total abolition in 1838. That was the year of the destruction of the great Free Hall by a mob in Philadelphia. Mr. Garrison's *Liberator* had been mobbed in Boston—the Tappans in New York. The mails had been violated south, Lovejoy murdered in Illinois. The north was filled with outrage. In Ohio, on the Reserve, feeble antislavery societies existed in most of the older counties. Oberlin was established in the Lorain county woods, in 1834. That was the year when in the Lane theological seminary, among the Walnut hills, near Cincinnati, of which Dr. Lyman Beecher was president, occurred the famous discussion of slavery, between the northern students led by Theodore Weld, and a remarkably able body of southern students. Dr. Beecher, under the eye of the trustees was not present, had no part or lot in it. Under the pressure of the board, young Weld led a body of the northern men across the young great state to Oberlin. He delivered a course of lectures soon after, at Jefferson and other points on the Reserve.

J. G. Birney driven from Kentucky, in the first month of 1836, established the *Philanthropist* in Cincinnati. Not many months elapsed when Judge Jacob Burnet, ex-United States senator, with a committee, waited upon him and required its suppression. He refused, and a mob suppressed it. Salmon P. Chase was then a young lawyer of that city. Weld, at the places of his deliverances, was protected. His disciples were mobbed in many places on the Reserve. In 1838-9, Kentucky, by a commission,



made a demand of a more stringent fugitive slave law, at the hands of the Ohio legislature, and promptly received what it demanded. Frank Wade (old Ben Wade of the United States senate) then in the state senate, by a Whig majority of 4,000, for his speeches in opposition to that bill, at the following election, was defeated by a pro-slavery Democrat.

It is quite impossible for one of the later generations to appreciate the real conditions of the great first stages of the slavery struggle. The north was unanimously proslavery. Every foot of its soil, by hard close bitter warfare, had first to be conquered to freedom. This was the era of civil strife, of mobs, violence, murder.

The susceptibility of the Reserve people to new impressions, their proverbial hospitality to new ideas, notions, *whims*, rendered that region specially apt to impressions, impulses, sentiments, hostile to slavery. They had the old Puritan faith in God, will never lose that. Their intellectual quickness, proneness to argument, dialectic ability, and fondness of debate, their deep underlying moral nature, made a rich warm soil, in which all anti-slavery seed, so liberally there deposited, had quick germination and sprung in a day to rank, yet hardy growth.

When the Whig national convention nominated Gen. Taylor for President, in 1848, a young Whig lawyer of the Giddings-Wade school called a mass meeting of his county, to repudiate it. This was immediately followed in each of the Reserve counties, by similar assemblies, and the work was done. The seed

sown with patience, often by well-known hands in that day, with resounding proclamation, as in silence, in twilight, with tears, sprang to splendid seeding. From that day to the end of the conflict, no section of compact equal territory, at the polls, or on the battlefield, gave so many unwavering warriors to the side of freedom.

Not all at once, as by a miracle, bursting into flame in 1848, when, save a single county, the Reserve elected an entire delegation, eight representatives and three senators, to the legislature, and every county officer, of outspoken antislavery sentiment. This wide seemingly spontaneous manifestation, overthrowing, confounding organizations, and those who depended on them, were due to obvious causes, as to hidden influences at work with the appreciative, all hospitable, emancipated minds of the immediate descendants of the New England planters, transplanted to the broader freer west.

Joshua R. Giddings and his then junior partner, B. F. Wade, as hundreds of less conspicuous men, were not so much converted by the eloquence and mental power of Weld, as quickened, aroused. Among the locally famous champions, well known throughout the Reserve, were many worthy of historic record. There were several faithful clergymen, though as a rule the church bodies were conservative. Quite all the Whig press re-echoed the growing sentiment. Giddings entered the twenty-sixth congress and devoted himself to an *expose* of the national and political means and measures, reaching back to the beginning of

the constitutional government, for the support and spread—the diffusion of slavery. He early produced his valuable *Pacificus* papers—anything but peaceful in their teachings, though moderate in tone. The political future of the rising contest was a marked feature on the Reserve in 1840-1844, though Giddings and his followers remained in the Whig party till 1848, when they went in a mass.

Garrison and Fred Douglass visited the Reserve in company, and were everywhere heard with growing satisfaction, though not so many sympathized with Mr. Garrison's methods and proposed action or inaction. Very soon came also Abby Kelly and S. S. Foster. Abby was the most effective of all the eastern propagandists, not excepting Mr. Garrison, as Foster was the most ferocious, save Parker Pillsbury, who came a little later.

It will be remembered that early, there was a divide on the question of political action, among the antislavery men, causing great bitterness. In addition to this, there was a third cause of strife among them on the Reserve. Under the consummate leadership of Mr. Giddings, the great mass of the antislavery sentiment still found shelter in the all powerful Whig party of the Reserve, and hence he and those who thought and acted with him were the immediate objects of the assaults of the openly designated abolitionists; a name the younger of Mr. Giddings' followers never took, and to whom at that day it was odious.

Mr. Giddings as in the way of the ad-

vance of the abolition cause, was the immediate object of the attack of Abby Kelly and Foster, to whom on one or two memorable occasions he replied. It was by his immediate influence that the antislavery Whigs, five-sixths of the party of the Reserve, remained steadfast, waging the three-cornered war, against the national proslavery Democracy at one angle; and the Garrison-Birney abolitionists—who were at bitterest feud—at the others. Inevitably the peculiar views of Mr. Garrison on other subjects found the receptive soil of the Reserve responsive, as the reader will readily see.

This last bitterness still survives, as whoever reads 'The Story of William Lloyd Garrison, told by his Children', will at once discover, the full strength and breadth of which will be the more clearly seen, when the equally interesting and more romantic story of James Gillespie Birney, is told by his children. There was also bitter, but for the time smothered wrath and war between the conservative Whigs and Mr. Giddings and his followers, who, as long as they remained, controlled the destinies of the party in the state, which perished when they left it. It defeated Mr. Giddings for the senate in the ensuing legislature, where the Whigs and Free Soilers predominated. The Whigs preferred the election of Chase by the Free Soilers and Democrats. Hence the launch of his career.

This grasp of Giddings on the growing, swelling antislavery sentiment of his section, was what gave the great dramatic effect to the opening act of

the election of 1848, in northern Ohio, when leader and followers—quite the entire party, with loud shouts, raised the Free Soil banner, and established a new entrenched camp. To these came the thin, but brave and heroic Liberty party. Fortunately, B. F. Wade remained with the residuum of the Whigs, and was the one strong tenacious enemy of slavery whose election to the

United States Senate in 1850-51 was possible in the then state of parties and men in the Ohio legislature.

This note of events, following the election of '48, rounds a historic period, rather than aids my enquiry and conducts my brief study, logically, I trust, as chronologically, to its conclusion.

A. G. RIDDLE.

## THE BENCH AND BAR OF TORONTO.

### VII.

THE HONORABLE THOMAS COCHRANE, JUDGE OF KING'S BENCH, UPPER CANADA.

The Hon. Thomas Cochrane was a member of the English bar, receiving his call at Lincoln's Inn. His father was the Hon. Thomas Cochrane, speaker of the Nova Scotia assembly in 1784, and 1788, a member of the council of that province. The Cochranes were a distinguished family. William, a brother of the judge, was a general in the army, and another brother, Sir James Cochrane, chief justice of Gibraltar. One of his sisters married Commodore, afterward Sir Rupert George, and another Dr. John Inglis, the second bishop of Nova Scotia. Before Judge Cochrane's appointment to the bench of upper Canada, he was chief justice of the supreme court of Prince Edward Island, to which office he was appointed on the twenty-fourth of October, 1801. The patent of his appointment as judge of the king's

bench of Upper Canada is dated the twenty-fifth of June, 1803, and judge of oyer and terminer and general gaol delivery on the twentieth of July, 1803. He was not more than thirty years of age when appointed to the bench of upper Canada. Lord Hobart, in writing to Lieutenant general Hunter, making him acquainted with Judge Cochrane's appointment, expressed himself as satisfied with his ability for the post. Lord Hobart's letter is dated the thirty-first of May, 1802, and in it he says: "Mr. Cochrane, at present chief justice of the island of Prince Edward, will proceed to your government as *puisne* judge in the room of Mr. Alcock. These arrangements will, I trust, ensure a continuance of that regularity and ability with which the business of the courts in the two provinces have so long been conducted."

Judge Cochrane is styled judge of the king's bench, Upper Canada, and not judge of Upper Canada, as a few years before his appointment the provincial legislature had passed an act constituting a court of record, to be styled "His Majesty's court of king's bench for Upper Canada." This act was passed in the thirty-fourth year of the reign of George III., on the ninth of July, 1794. The first parliament of the province declared that this court should possess all such powers and authority as by the laws of England were incident to a superior court of civil and criminal jurisdiction, and should have and exercise all the rights, incidents and privileges as fully to all intents and purposes as the same were at the time the act took effect, used, exercised and enjoyed by any of his majesty's superior courts of law at Westminster, in England.

Judge Cochrane was only judge in the province for little over a year when his career was cut short by an accident, which I will describe further on. I cannot find from the records that he presided at more than one court in the province previous to his sudden taking off, and that was at the court of assize and *nisi prius* for the Newcastle district, held the twenty-sixth of September, 1803. There is indeed no official record of his having presided at any court, but Mr. Alexander McDonell, senior clerk in the crown office, has in his possession, and which he has shown me, the docket of causes kept by his uncle Angus McDonell, in which is an entry of his that he was engaged in a cause at the Newcastle court of which

I have spoken, and that Judge Cochrane presided at that court. The fact that there is no official account of his judicial acts may be accounted for by the probability that his own note book perished with the judge when he was drowned in the waters of Lake Ontario. It is not often that a whole court, judge counselor, crown officer, high sheriff, and prisoner to be tried are all drowned at one and the same time. This, however, was an event that occurred in Upper Canada in 1804. It happened that in the month of October of that year the administration of criminal justice required that investigation be made into the circumstances connected with the death and alleged murder of one Thorp, a white man, said to have been murdered at Ball Point, on Lake Scugog. The crime, if such it was, had been committed in the year previous. An Indian who passed by the name of Whistling Duck, a brother of Ogetonicut, had been murdered by a white man; and as in those days before missionaries had softened and enlightened the heart of the Indian, revenge was a prominent article of the red man's creed, an Indian, Ogetonicut, of the Muskrat branch of the tribe of Chippewas, determined to have his revenge, and so to carry out his purpose he murdered another white man, one John Sharp. Governor Hunter had promised that the murderer of Whistling Duck should be punished. The law's delay had, however, intervened, the prospect of punishment being meted out to the guilty was not encouraging. Chief Wabasheco, of the Muskrat



branch of the tribe referred to, conceived it to be his duty to interview the governor. He and his tribe, Ogetonicut among the number, voyaged in canoes from the mouth of Annis creek, near Port Oshawa, to Gibraltar Point, opposite York, where they encamped. The arrival of the dusky sons of the forest became known to the authorities, the machinery of the law for the arrest of Ogetonicut was set in motion. Constables were ordered to their duty, with the aid of a guard of soldiers Ogetonicut was lodged in jail at York. It afterwards appeared by actual survey that the offense was not committed in the home district, but in the Newcastle district. The trial, therefore, must take place in the latter district. In those days the voyage down the lake was mostly made by canoe or schooner. The schooner Speedy was chartered to convey the court from York to the camping place where the investigation was to be held. It was the seventh of October, 1804, the weather was stormy, and the Speedy not being over-seaworthy was not able to withstand the gale. In the dead of night the vessel suddenly went down, buried in the waters of Lake Ontario, not far from Presque Isle harbor. The captain of the schooner, Judge Cochrane, Solicitor-general Gray, Angus McDonell (whom I have previously named), the Indian prisoner, two interpreters, several witnesses, Mr. Herchmer, a merchant of York, in all thirty-nine persons, were swallowed up in the deep. No trace of them or the vessel was ever after discovered. It was a short summons and mournful fate which

overtook the passengers and crew on the Speedy.

There are those who go down in the dead, wild sea,  
When storms have wrecked proud ships,  
With none to heed what the words may be  
That break from their gurgling lips.

No anthem peal flows sweet and loud,  
No tablets mark their graves,  
But they soundly sleep in a coral shroud  
To the dirge of the rolling waves.

'Tis well to find our last repose  
'Neath the churchyard's sacred sod,  
But those who sleep in the desert or deep  
Are watched by the self-same God.

THE HONORABLE ROBERT THORPE, JUDGE  
OF THE COURT OF KING'S BENCH,  
UPPER CANADA.

Judge Thorpe, Mr. Stewart in his history of the Laws of Prince Edward Island states, was an Irish lawyer. He, like Judge Cochrane, had been a judge of the supreme court of Prince Edward Island, before his appointment to a judgeship in Upper Canada. His appointment as a judge of the supreme court of Prince Edward Island took place on the tenth of November, 1802, and to the judgeship of the court of the King's Bench of Upper Canada on the twenty-fourth of January, 1805. He also received a commission to secure titles to lands on the eleventh of April, 1805. The first entry I find of his having presided in court is that he held the criminal court at York, on the twenty-fifth of March, 1806, and had as his associate W. Willcocks. At this court, William Warren Baldwin, the father of Robert Baldwin, was sworn in as acting clerk of the crown and common pleas. *En passant*, I may remark that the Wil-

liam Warren Baldwin here named was the well known and much esteemed Dr. Baldwin, the first treasurer of the law society. I reserve any further reference to this, hoping at a future time, in writing of the bar to give some account of the early bar of the province, many of whose members, without bearing the title of judge, were equally distinguished with those who were habited in the ermine. Judge Thorpe presided again at the York (Home district) assizes on the twenty-eighth of October, 1805, when, as the record states, "a negro 'Jupiter,' on the complaint of John Denison that he had threatend to poison him, was bound over to keep the peace toward him and his family." Jupiter, though high sounding, is not an everyday name. I strongly suspect this Jupiter, charged as aforesaid, was the very Jupiter, or of kin to the very Jupiter, the son of a slave woman named Peggy, owned by ex-President Peter Russell. In 1806 in several numbers of the York Gazette appeared the advertisement "To be sold, a black woman, named Peggy, aged about 40, and a black boy, her son, named 'Jupiter,' aged about 15 years, both of them the property of the subscriber. The boy is tall and strong of his age. The price of the woman is \$150; for the boy, \$200—one-fourth less for ready money. Signed, Peter Russell." The introduction of slaves into the province had been interdicted by the act of 1793. That act, however, confirmed the right of property in slaves then in servitude, hence we find Mr. Russell endeavoring to turn his property to account.

Judge Thorpe again presided at the assizes for the Western district, held at Sandwich on the first of September, 1806, and for the last time so far as I can discern at the assizes for the London district, held at Charlotteville, on the thirteenth of September, 1806.

It was during the occupancy of the bench by Judge Thorpe that Lieutenant-governor Francis Gore was appointed to the chief executive office of the province. Mr. Francis Gore had been lieutenant-governor of Bermuda before being appointed to the governorship of Upper Canada. He was a man endowed with many good qualities, but much given to prerogative right and arbitrary rule. It was no fault of his that his predecessor, Governor Hunter, had, by his administration, stirred up a spirit of hostility to the reigning powers that seriously interfered with equable administration by Governor Gore. The immediate successor in the governorship to him was Commodore Grant, whom I think we may call sailor, soldier and statesman, as he at one time and another filled all these positions—first a sailor in the merchant service, then a midshipman, then a soldier in a high-land regiment, and then in the war of 1812 put in command of a sloop of 16 guns to operate on the lakes. In 1806 he was an executive counselor, and by an understood rotation became temporary governor. He was more a man of science than politician, though somewhat engaged in politics. During his temporary administration of the government he had not been able to allay the excited and clamorous (for reform) feel-

ing of the people. In July, 1806, Lieutenant-governor Gore assumed the reins of government in succession to President Grant. Great expectations were aroused by the arrival of the new governor. It was thought that he would speedily set things to right. Captain Green who had been military secretary to Governor Hunter, in August, 1806, writes to Mr. McGill of York: "Of course, I may congratulate you on the safe arrival of your lieutenant-governor whose amiable manners will, I think, conciliate the various points that have been in opposition to that cordiality which must ever reign in societies well regulated." Again, in September, in reply to a communication from York, Captain Green writes: "It gives me very sincere satisfaction to find that the lieutenant-governor is so well liked. I think he will put the axe at once to the root of the tree of discord and anarchy which lately has raised its head amongst you; that done you will succeed and prosper."

Now the reader may well inquire what was the discord, anarchy and confusion alluded to all about? It was just this: At this time the minds of numbers of the people, and even the minds of certain officials of the government were impressed with the idea that there was too much oligarchical rule in the province; that the executive authority set at defiance the will of the people, as expressed through their representatives. It was not in those days as it is now. Then, not now, the judges were eligible for election as members of parliament. Judge Thorpe had not

allied himself so much with the governing powers of that day as with the Willcocks and the Wyatts, men of independent thought and firm in their resolves whenever an issue occurred between the governor and the people. Yielding to these impulses, Judge Thorpe accepted the candidature to parliament offered him by the people of the Home district. This fired the breast of the governor and oligarchy of the period. Mr. Surveyor-General Wyatt and Sheriff Willcocks were of one mind with the judge, and therefore opposed to the governor. The governor, carrying out the doctrine of the time, the divine right of kings and their satraps, that might makes right, determined to rid himself both of the judge and the surveyor-general. He consequently suspended both of them from their high offices, subject to the confirmation of the English government. In 1807 the judge was relieved, and in the same year the surveyor general, Wyatt, was suspended. Nothing daunted, the judge appealed not only to the home government but to the law for satisfaction, and so also did Mr. Wyatt. Mr. Wyatt sued the governor in an action at law in England, which came down to trial before Chief-Justice Gibbs in 1816. A study of that case shows how the matter stood between the judge and the governor.

The third count of the declaration sets out the principal complaint of Mr. Wyatt, the surveyor-general. That count alleged: "That the defendant (Governor Gore) to cause the plaintiff to be deprived of his office, and to induce the King to confirm the suspen-

sion, wrote the secretary of state certain false letters representing that the plaintiff had been generally hostile to his majesty's representative, and was engaged with disaffected persons; and that plaintiff, moreover, had erased the name of a person from the plans in the office of the surveyor-general who had settled and made improvements in a favorable location of land, and had declared the lot to be vacant, and had obtained a grant of it to himself. That by means of said letters the King confirmed the suspension and revoked his appointment, and the plaintiff was prevented from enjoying another office, viz: the office of receiver-general of the said province." The defendant, in his pleadings, justified the charge. At this trial the attorney-general of the province was a witness to prove publication of the pamphlet. The name of the attorney-general is not given in the reported case, but I suppose it was the Hon. D'Arcy Boulton, who was appointed attorney general in 1814, and was the immediate predecessor of the Hon. John Beverley Robinson, appointed in 1818. The counts in the declaration which charged that the defendant, the governor, had acted wilfully, maliciously and without probable cause in suspending the plaintiff from his office was not, in the opinion of Chief-Justice Gibbs, sustained, but he thought the matter contained in the pamphlet which contained the libel in question was libellous. The jury awarded the plaintiff £300 (\$1,500) damages for the wrong done him by the governor. It is the boast of English law that the same

measure of justice is meted out to the rich and the poor, to the high and the low, to the King and his subjects. In the case of the legal war which waged between the King's surveyor-general of the province and his governor of the province, it was a case of Greek meeting Greek, but the Canadian came out triumphantly in his action with the king's executive head of the province.

I have said that Judge Thorpe and Mr. Willcocks were very much of one mind in regard to popular rights and executive power exercised in those days by an officer the holder of the colonial office in Downing street. The days of responsible government had not yet come upon the infant province. The governor was king, and the officials of the government his satraps. Mr. Justice Thorpe, in his charge to the grand jury of the London district in 1806, said to them: "The art of governing is a difficult science. Knowledge is not instinctive, and the days of inspiration have passed away. Therefore when there was neither talent, education, information and even manners in the administration, little could be expected, and nothing was produced. But there is a point of depression, as well as of exaltation, from which all human affairs naturally advance or recede. Therefore proportionate to your depression, we may expect your progress in prosperity will advance with accelerated velocity." So far as this charge had reference to rulers, information, manners and all that, it was not so much intended for Governor Gore as for Lieutenant-Governor Hunter and



his rule. The new governor, Gore, had not yet crossed the path of the new judge, Thorpe, for in the same address, in reply to the grand jury, who expressed their approbation of the fact that Mr. Gore, a civilian, had been appointed governor, the judge said: "I shall lay before the governor everything you desire, and I have not the slightest doubt but that I shall find in him such power of mind, such political acquirements and official habits, and such good dispositions as are fitted to make an infant province a permanent state, wealthy and powerful, abounding in blessing to the inhabitants, and so valuable to that great empire from which we receive everything estimable and to which we are anxious to make the most grateful return." It does seem unfortunate that the prevailing idea at this period of the history of the province that there was no impropriety in the judges—appointees of the crown, also becoming candidates for parliament, and elected to be representatives of the people. Judge Thorpe, who had only entered the province in 1805, had so much earned the confidence of the people that he was elected a member to the parliament which met at York on the second of February, 1807. Judge Thorpe not only in the parliament had been very free in his criticisms of the acts of the executive; his charge to the grand jury of London, to which I have referred, shows pretty well how caustic and incisive the judge could be, the Anglo-Saxon stolidity and solidity of his race crops out in every passage of his address. Governor Gore,

though of a genial disposition, was not one to be thwarted in his purpose, or unduly criticised in his conduct, without resenting it. He did not at all like the judge's espousing the popular side. In those days one who espoused the popular side in opposition to the powers regnant were apt to be called and even treated as rebels, if not something worse. After the close of the session of parliament, which took place in March, 1807, the governor proceeded to Montreal. On his way down the St. Lawrence he stopped at Kingston, and there dined with Chief-Justice Scott, who was holding the court at that town. We are indebted to Dr. Scadding for giving us the means of judging of the estimate in which both Mr. Wilcox and Judge Thorpe were held by the governor, this estimate being made more on political than personal grounds. Dr. Scadding tells us that the governor wrote his friend, Mr. McGill, a very expressive letter, in which he said: "I received most sincere satisfaction in finding that our good and worthy friend, the chief-justice (Scott), had got on very well; that at Newcastle the jury was respectable, and approved of their judge, not one word being uttered respecting that other execrable monster who would deluge the province with blood." The execrable monster here referred to was no doubt Mr. Willcocks, who, after having been deprived of the shrievalty of the home district, had set up an opposition newspaper, *The Upper Canada Guardian*, a freeman's journal, the large circulation of which gave the governor much uneasiness. In another

part of the letter to Mr. McGill to which I have alluded, the governor says: "At Kingston everything went off, as might have been expected, well; the chief entertaining a party of about forty at dinner. A number of the rebel papers (meaning Mr. Willcocks' newspaper) were distributed to poison the minds of the people, but, I hope, without effect. The object of T.'s emissions (Mr. T. is Judge Thorpe, and his emissions would be his charges to jurors and his speeches in the house and elsewhere,) appear to be to persuade the people to turn every gentleman out of the house of assembly. However, keep your temper with the rascals, I beseech you. I shall represent everything at St. James"—*i. e.*, headquarters in London.

The language of the governor certainly was not very dignified, however his sense of prerogative right gave him the right to use it. The governor did represent everything at St. James, and the result was that in the following October the following paragraph appeared in the York Gazette: "His Majesty's pleasure has been received by the lieutenant-governor to suspend Mr. Thorpe from the office of judge in Upper Canada, and measures are to be taken for appointing a successor. The secretary of state has also signified to the lieutenant-governor his majesty's approbation of his having suspended Mr. Wyatt from the office of surveyor-general of lands in the province."

We have seen the approbation of the sovereign, of the act of Governor Gore in suspending Mr. Wyatt, the surveyor-

general, which act afterwards in a trial at law cost the governor £300 sterling money of Great Britain. Now let us see how the matter ended as between the governor and the judge. This resulted also in an action of libel brought by Judge Thorpe against the governor, in which the governor was again mulcted in damages at the suit of the chief-justice.

These proceedings only show that a case as between a governor and a judge or other official when seen through the spectacles of a British jury instead of the eyes of a colonial minister may present a very different aspect.

The sequel was that the chief-justice regained the confidence of the British government; and although not restored to the office of which he had been deprived, he was afterward appointed to the chief-justiceship of Sierra Leone, where he remained twenty years, when ill health caused his return to England. Chief-Justice Thorpe was a very upright and conscientious man—most independent in character and conduct, he asked no favor and feared not the power of the colonial oligarchy or the governor of the colony. He was very unfortunate; for the rulers of the day and he could not hold the same opinion of public affairs. The governor leaned to the side of his executive council, who were incensed at the chief-justice because he could not conscientiously subscribe to the acts of the government. As one writer expresses it, "His only object was to effect the strict and upright discharge of his duty uninfluenced and unbiased by party or by prejudice." Governor Gore did not fare as well as the

chief-justice. Although he was caressed by the government and the time-serving powers of the day, he was in turn recalled from the government of the province by the government of England. I forbear to enter into the differences between the governor and the chief-justice. Impartial history compels us to say that they

were both men of much independence of character—perhaps too much alike to agree. The governor from his position had the advantage of the chief-justice, but the chief-justice on appeal to his compatriots was vindicated in his official conduct in Upper Canada.

D. B. READ.

#### JUDGE CONWAY W. NOBLE.

CLEVELAND is a city not without just pretensions to greatness, in superficial dimensions, numerical growth and commercial importance. Nowhere else on this green earth, taking Mr. Bancroft for authority, is the average intelligence graduated so high as on the Western Reserve, of which this city is the nucleus. It is not without interest from time to time to cull an integer of conspicuous prominence from among her brainy and successful people; and review the antecedents which often link this municipality with distant scenes and more primitive times.

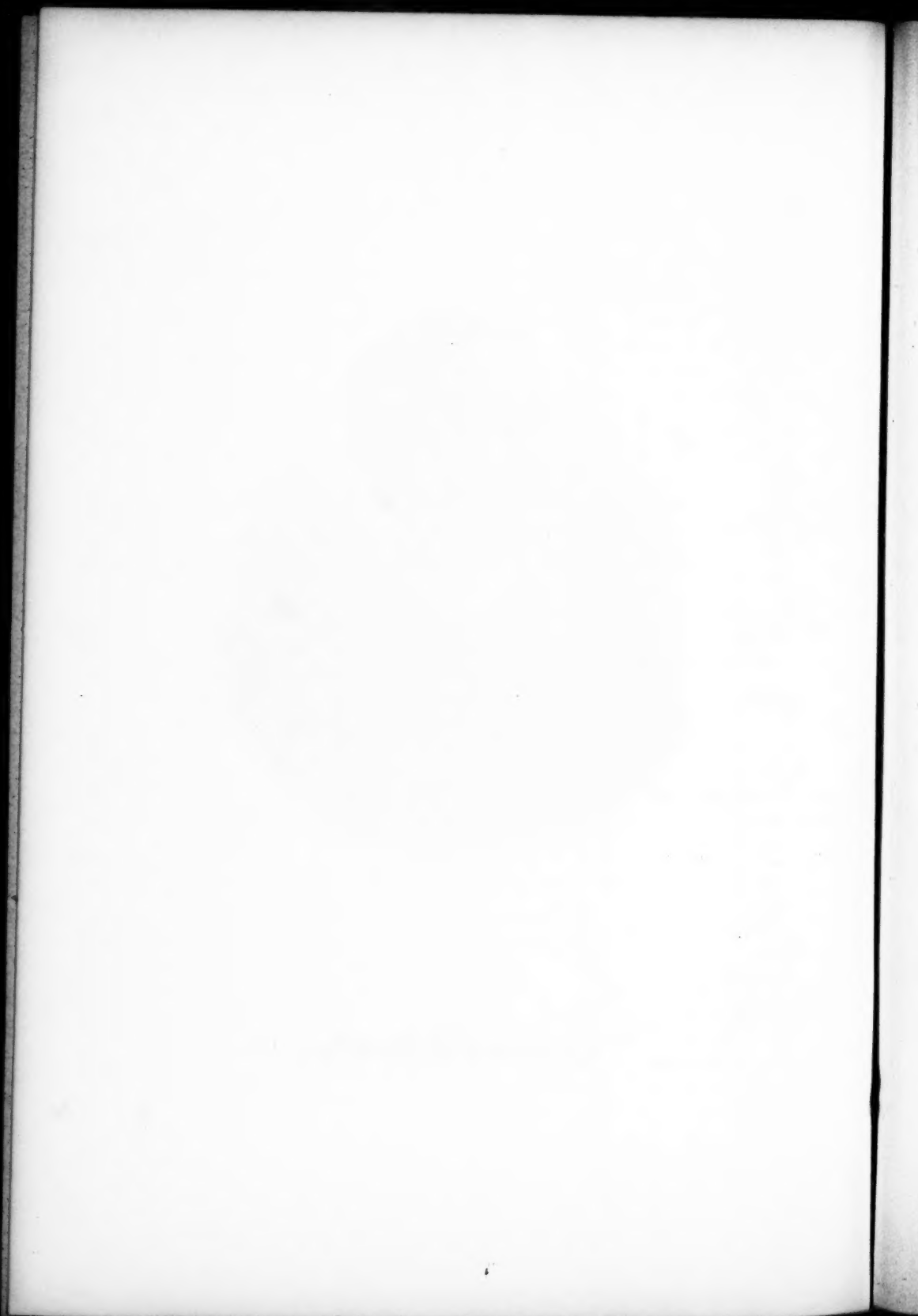
In the crucial period when the immortal Declaration of Independence startled a crown-cursed world with new ideas and epic hopes of popular government, a little French colony penetrated the western wilderness and formed a settlement on the western shores of Lake Erie. The transforming fingers of time have constructed on that site a beautiful and thriving town of some five thousand inhabitants, blessed with several railroads, seven or eight temples for worship, a magnificent court house,

woolen and flouring mills, a ladies' seminary; extensive nurseries and all the concomitants of American civilization. Yet the cultured traveler who visits Monroe, Michigan, will still find ample opportunity to air his knowledge of French, in confabulation with scores of the good folk whose ancestors settled the place under the original name of Frenchtown. Nature has done much for Monroe and her environs in her lavish bestowal of scenery attractive to the eye and in resources for the practical uses of man. The memorable River Raisin, which drains a fertile valley and courses through the town, is spanned by noble bridges and stocked fresh from the lake but two miles away, with large fish, which are the delight of the characteristic small boy as well as of many children grown. It was on the banks of this stream in 1813, that occurred the massacre of several hundred American prisoners, victims of the battle known as that of the River Raisin, fought between the United States forces and the English and their savages allies. The



*Conway W. Noble*





famous territorial war of tremendous threats but bloodless issue, between self authorized bands of Wolverenes and Buckeyes, had its principal theatre of action in the vicinity of Monroe.

Judge Conway W. Noble, a luminous star in the bright galaxy of the Cleveland bar, was born in this picturesque and historic town of Monroe, October 7, 1842. His father, Charles Noble, was among the earliest settlers of the place, the seductive possibilities, despite the hardships and perils, of pioneer life in the fertile and growing west, having lured him to forever forsake his comfortable but too quiet home in Williamstown, Massachusetts. He had first, however, fitted himself for a higher station than felling trees and building log cabins (though of all these experiences he was a part), having secured a liberal education and graduated with honor from Williams college. The wisdom of this preparation for even a life on the frontier was vindicated in the leading part the father of the subject of this sketch was called upon to take in the stirring events and public affairs affecting the safety and development of not only Michigan, but the Northwest Territory. He filled with credit various responsible offices, territorial and state, among which may be mentioned that of surveyor-general for the whole territory, a position to which he was appointed under President Fillmore's administration; also the office of circuit judge at Monroe, a trust which he adorned for many years.

It should be noted in this connection as a rather remarkable coincidence,

that the father of Judge Charles Noble had also filled with distinction a place on the bench, in Massachusetts, so that the appellation "Judge Noble" appears to be almost hereditary, having been perpetuated for three successive generations—as far back as the writer is able to trace the noble lineage. The grandsire and his family were actuated with a common spirit of enterprise, and together they settled in and about Monroe, where many descendants of the primitive stock still reside and are numbered among her most worthy and substantial citizens.

The maiden name of the wife of Judge Charles Noble was Miss Eliza Sims Wing. Her birthplace was Marietta, Ohio. Through the many and eventful years of companionship which followed the nuptial ceremony, she presided over her humble home with the graces of love, courage and fidelity, which qualities were not manifested alone in her domestic relations, but her ministrations of charity often found a wider scope in the special cases of want and affliction from which no community is wholly exempt. The twain shared the joys and vicissitudes of pioneer life, supplemented by an era of settled comfort which their own civilizing agency helped to achieve. Their closing years were spent at Detroit, whither they removed in 1867. Both were very active and consistent members of the Presbyterian church, in which the husband officiated as elder, both in Monroe and Detroit. The devoted wife and mother died in May, 1886, at the age of eighty-three. Her faithful

consort had departed this life full of days and honors, 1873, in his seventysixth year.

Conway W., when a youth of sixteen, had acquired an elementary education fitting him for college, and entered Michigan university in 1858. He was unavoidably absent the second year of his course, but resumed and diligently pursued his studies thereafter and graduated from the general literary department with the class of 1863, at the age of twenty-one. The highest college honors open for competition at that time were awarded to him and he was one of the fifteen seniors to perform on commencement day, and had also been selected for a similar distinction at the exhibition given by the Junior class sometime previous. On receiving his degree the young man came direct to Cleveland and entered the law office of F. T. Backus and Charles W. Noble, an elder brother of Conway, who had been in practice for some years, and was esteemed as one of the ablest attorneys of the Forest city. A few months later, viz., in 1864, the law student laid aside his books, and with patriotic ardor enlisted with the one hundred days' men in Company A., One Hundred and Fiftieth regiment Ohio volunteer infantry, commanded by Colonel Haywood and organized for garrison duty at the Federal capital. It was the first regiment to arrive in defence of Washington, and the only United States force in that vicinity when the capital was menaced by General Jubal A. Early who, in 1864, raided the valley of the Shenandoah and made a dash into

Pennsylvania, partly burning Chambersburg, and whose military career was terminated by a series of defeats at Opequan, Fisher's hill, Cedar creek and finally by Custar at Wanesborough, which reverses cost him his commission as a rebel chieftain.

Returning to Cleveland, Mr. Noble entered the Ohio State Union Law college, and having satisfactorily passed examination was admitted to practice in 1865. The following year he and his brother Charles formed a partnership, which was terminated four months from the time of its inception, by the latter removing from the city. He then united his legal abilities and practice with those of the experienced and successful lawyer, Robert E. Mix. In 1872 Mr. John G. White was admitted to the firm, which was thereupon styled Mix, Noble & White.

The partnership proved eminently successful and subsisted until necessarily terminated by Mr. Noble's preferment to the bench. At the recent period when that event occurred, the firm was the oldest in the city and its business ramifications extended into all the commercial centres of the east. Its admiralty practice was especially large and for a decade or more the firm had been retained upon one side or the other of nearly all the admiralty cases pending in the United States courts here. Very rarely were the individual or corporate clients of Mix, Noble & White disappointed by defeat, and among the number of regular suitors whose patronage testified to their vigilance and resources of learn-

ing and skill may be mentioned Bradstreet's commercial agency which the firm represented for many years.

Mr. Noble's familiarity with all that relates to medical jurisprudence, coupled with his entertaining qualities as a speaker, which were manifest and duly recognized in his college days, led to his appointment, in 1867, to the chair of legal medicine in the medical department of the University of Wooster, which position he filled with marked ability through a protracted period terminating about 1881.

A felicitous event in the career of Judge Noble, as we shall henceforth call him, must not be overlooked. On December 1, 1880, was consummated his marriage with Mrs. Ida E. Jones, at Norwalk, Ohio. Her early days were passed in York State, and for some time previous to their marriage she resided in North Carolina. The judge secured as his companion a charming and accomplished lady of rare excellence of mind and heart. Both are active members of the Presbyterian church; and Mrs. Noble, though well qualified for taking a leading part in social circles, with their fascinations and enjoyments, has ever given the preference in her time and attention to the various duties of church relationship and the multiplex demands for sympathy and charity which abound among the denizens of a large city. She is, in fine, an attractive, devoted and highly appreciated Christian woman.

Judge Noble never participated in politics—in which he is known as a

conservative Democrat—to any extent, and never sought elevation to office by the manipulation of party machinery. His appointment by Governor Foraker, in January, 1887, to fill the unexpired term of Judge J. M. Jones of the common pleas court, made vacant by his resignation, was a proper recognition of the judicial qualities transmitted to the appointee through several generations, and was done in compliance with the solicitation of all local members of court. The nomination for judge of the court of common pleas bestowed upon Judge Noble by the Democratic party, for the November election of 1886, was made as it were by common consent, and at a time when he was absent from the city. Some men, under like circumstances, would shrink from leading what might seem to be a forlorn hope, when considering that a Republican majority in the county of four thousand was to be overcome, and when the opposing candidate was so strong a man as Captain M. B. Gary. But, although the nomination invited defeat, and was entirely unsought, Judge Noble had the nerve to make the run and was triumphantly elected.

"When office seeks a candidate  
'Tis apt to seek a man;  
But when the office 'tis that's sought,  
The seeker is a sham."

The license for personal abuse, whether merited or undeserved by him who is a nominee for office, has unfortunately become a prevalent factor in American politics; but it is a gratifying feature in that November campaign, and one highly complimentary to the judge,



that no party organ or individual supporter of Captain Gary ventured to strengthen his argument by uttering a syllable in derogation of the character or fitness of the captain's successful adversary. Judge Noble's term of office began on the ninth of February last, and continues for five years. The judge was assigned to room No. 1 of the reconstructed court house, the room set apart for the occupancy of the presiding judge in that temple of justice. His rulings, charges and decisions have uniformly commanded the respect and commendation of members of the bar, and are approved by all whose judgments are unbiased by self-interest. The judge possesses a magnificent law library, which requires so much room that he has been compelled to make provision for shelving a considerable part of it in his private residence on the avenue. All the published lights,

therefore, that shine upon perplexing problems and niceties of law, from the musty volumes of the past to the freshly printed reports and treatises of modern jurisprudence, are at his disposal, and have not shone upon his legal pathway in vain.

In verbal expression Judge Noble speaks with the directness and clearness that become a successful lawyer and rising jurist. Personally, he is approachable, affable and modest in manner and pleasing in address. In physical appearance he looks to be the comparatively young man he is, and the foregoing outline of the first forty-four years of his existence cannot be regarded as his biography, but only as an imperfect sketch, which must be left for the flattering possibilities of perhaps many added years of public service and honors to complete and adorn.

HENRY EUGENE FOSTER.





Missouri Western History

J. C. Smalley

## THE BENCH AND BAR OF MILWAUKEE.

## III.

JONATHAN E. ARNOLD.—BYRON PAINE.—ALBERT SMITH.

[In No. II. of this series, the general history was carried up to 1848. Before continuing farther in that direction, it has been thought well to glance at three commanding figures of these earlier days.]—ED.

JONATHAN E. ARNOLD.

No name appears with greater frequency in the history of the bar of Milwaukee than that of Jonathan E. Arnold, and no man of all the brilliant men who have been a part of that organization has received from his associates a greater share of kindly regard, or a more touching tribute of memory. The words of sincere praise that are uttered by those who were upon the scene of action in his day, or by that younger generation who came upon it as he was preparing to depart, are none the less truthful and heart-felt because the speaker takes note of the flaws in a character that, under more favoring circumstances, might have been rounded and completed into one of the strongest and noblest of the age. As a lawyer, Jonathan E. Arnold was the peer of his associates, and his impress has been left upon some of the most historic cases of the Northwest. The power with which he carried causes in which lay many dangers of legal dis-

aster through to a final triumph, was wondered at and admired by those who saw the achievement; the hold he had upon the minds and emotions of a jury, the native and simple dignity with which he bore himself amid trying circumstances, and the professional honor, of which he never lost sight—these are a part of the history of the bar to which he so long belonged, and are well worthy of permanent record.

There was a spirit of enterprise if not of unrest abroad in the east all through the decade of 1830-40 which reached its culmination near the middle thereof. The carrying capacity of the passenger vessels on the great lakes was at times taxed to its utmost in conveying to the new settlements of the west the hundreds and thousands of men who had fared forth to see what chance might befall their fortunes in the lands just opened to the advance of civilization. The small and ambitious village that three men were industriously building\* on the west shore of Lake Michi-

\* A small village, divided into three sections, called respectively Walker's Point, Juneau's Side and Kilbourn Town, in honor of the three distinguished claimants, who had entered the land, and commenced, each for himself, to found a city thereon, and over which, for a season, they exercised almost kingly power.—'Pioneer History of Milwaukee, James S. Buck, 1876.'



gan—each in his own way, and unmindful that all were working to a common end—received its share of the oncoming tide. To the new-comers there was little offered in their pioneer habitation except the hopes and opportunities of the future, and such immediate rewards as they themselves might compel from the unwilling circumstances about them. The year 1836 has well been called “a memorable year for Milwaukee”, as it gave her, in addition to gifts in other directions, scores of earnest and enterprising young men, who were among her foremost citizens during the remainder of their lives. A few of them still form a part of the great city they have helped to build, but the greater number have long since passed away.

In the latter class is Jonathan E. Arnold. Nature and culture had united in furnishing him with splendid equipment for the battle of life, and such weak points as had been welded into his armor with the strong, had not as yet shown themselves nor given warning under the blows of that legal strife he loved so well. Of New England descent, he had first seen the light of day at Woonsocket, Rhode Island, on February 16, 1814. Entering Brown University at the age of fourteen he had graduated at eighteen, and immediately entered the office of John Whipple, an eminent lawyer of Providence, where he remained as student for three years. Following this commencement of his legal education came a year at Harvard Law school, at that wonderfully advantageous period, when Judge

Story was charged with the administration of the institution. After a short period of practice in Providence, the young lawyer was led to trust himself in the swiftly moving westward stream, and in September, 1836, reached the locality in which he made his home until his death in the summer of 1869.

The country west of the lake had not yet advanced to that point of civilization where lawsuits could be furnished all who cared to take them in hand, and Mr. Arnold was compelled to wait for his share with the rest. The first case with which he was connected in Milwaukee, so far as I can discover, was tried soon after his arrival, where he appeared in defense of Captain Jackson, of the schooner *Cincinnati*, who was on trial for assault and battery. The action was brought before a justice of the peace, and was decided in favor of the captain, who paid his young counsel five dollars for the legal service involved. The defense of the Indians for murder\* to which he was assigned by the court, occurred in the summer of 1837. His first recorded appearance in an equity case was in the territorial district court for Milwaukee county, in the October term of 1837. The suit was that of *Stephen L. Harris vs. Joseph Nichols*, Mr. Arnold representing the plaintiff. During the same term he had part in three other suits of the same character, all for the foreclosure of mortgages. He seems to have had his share of business in this direction, as only one equity case appeared upon the books of the court in

\* For history of this case, see MAGAZINE OF WESTERN HISTORY for April, 1887, page 821.

the June term, and no great abundance in October. He was admitted to the supreme court of the territory, on July 16, 1838.

The above touches only upon the opening of his legal career, and from thenceforth he was busy in the practice of his profession, and the discharge of the various public duties to which he was from time to time chosen. It was not many years before he was one of the central figures of that little group of lawyers who won fame and applause in the "old court house"—then new, and proud in the consciousness that it was one of the earliest temples of justice erected in the northwest. The old lawyers of Milwaukee can fill in a leisure hour of to-day with a no more congenial task than a recital of the scenes enacted within it, and reminiscences of the men whose learning and eloquence have become a part of its history. It was only a plain frame building, two stories high, running fifty-one feet in one direction and forty-two in the other; but its four Tuscan columns and the pediment front they supported, gave it a classic garb that no other building in the town dare attempt, and said to the simple and offending that the temple of justice was something greater than the habitations for merchandise or men. As was said by Judge Ryan when the new court house was dedicated in 1870: "Within its old walls were heard Clinton Walworth and Alex. W. Stow and James Holliday. Over and over again, in tones of eloquence which no man living here to-day can rival, there was heard the voice of him who should have

spoken here to-day—Jonathan E. Arnold!"

The personal popularity of Mr. Arnold in those days must have been great, as we find him, in 1840, the candidate of both parties for membership in the board of trustees; and upon election he was given the position of clerk. His strength and grace as an orator had been already discovered, and at the celebration and barbecue in honor of the election of Harrison and Tyler, on January 1, of the same year, he was the chief orator of the day. He also served for several years as district attorney of Milwaukee county. He had so far advanced in the public confidence and respect that when William A. Prentiss and Daniel Wells, Jr., resigned from the council of the territorial legislature, he was chosen, in company with Don A. J. Upham to represent Milwaukee and Washington counties in their stead. This was in the first session of the third legislative assembly, which convened at Madison on the seventh of December, 1840, and adjourned on February 19, 1841.

Mr. Arnold does not seem to have made any effectual mark upon the legislation of the day, but his acquaintance with the leading men of his party, the Whig, was such, and his popularity so marked, that he was soon made the leader of that party in a contest of no small moment. At a state convention, held at Madison, on July 1, 1841, he was chosen the candidate for delegate to congress.\* On July 19, the Demo-

\* From "History of the Territory of Wisconsin," page 350: "On the twenty-fifth of May the Whig central committee issued a call for a convention of

cratic party met also in convention, and placed in nomination General Henry Dodge. The contest before the people was warm and full of spirit—not unmixed with bitterness—and resulted in Mr. Arnold's defeat, the election occurring on September 27, with the following vote :

Dodge.....3,435  
Arnold.....2,928

Dodge's majority..... 507

During this canvass the Whig nominee had been unfortunate in the sudden and unexpected desertion of the party organ, upon which he had depended for support. The change came through no act of treachery, but because of

Democratic Whig delegates, to be held at Madison on the first day of July. The representation under the call was double the number to which each election district was entitled in the house of representatives, so that the convention, if fully represented, would consist of fifty-two delegates. The convention assembled at the time fixed, and the election districts were nearly all fully represented. John P. Arndt of Green Bay was elected president, and Thomas Wright of Racine and C. J. Learned of Prairie du Chien were elected secretaries. A series of resolutions was reported and adopted, after which the convention proceeded to ballot for a candidate for delegate. The result was :

For Jonathan E. Arnold.....29 votes  
" William S. Hamilton.....14 "  
" James Collins..... 7 "  
" William A. Prentiss..... 1 "  
" Blank..... 1 "

And Jonathan E. Arnold was declared the candidate of the Whig party for delegate to congress. A committee of five—Edward V. Whiton, William S. Hamilton, William A. Prentiss, David Brigham and Charles J. Learned—was appointed to prepare an address to the people of the territory. A central committee of three—A. A. Bird, David Brigham and James Morrison—was appointed, and the convention adjourned *sine die*."

financial troubles for which no one was to blame. The *Sentinel*, the Whig organ, had gallantly hoisted the name of Jonathan E. Arnold to the masthead in July, and given him a valiant support. In the midst of the campaign the Whigs were surprised and thrown into a momentary panic to see the newspaper pass into the hands of H. N. Wells, a Democrat; to see a Democrat assume control, and the name of General Dodge inserted at the head of the column where that of Mr. Arnold had been. The simple explanation was soon made that Mr. Wells had foreclosed a mortgage which the former owners of the paper had no power to remove, and that, being a Democrat, he had naturally thrown his influence to the support of the party in whose principles he had faith. This reasonable explanation did not undo the damage caused the Whigs, and, although an opposition sheet was soon started under Whig auspices, the blow was a severe one and may have had its effect in the triumph of General Dodge.

Mr. Arnold had resigned his position in the council, and John H. Tweedy was chosen to the vacancy.

In 1842 Mr. Arnold was again elected a city trustee, from the east ward. He took an active and fruitful interest in measures relating to the development and improvement of the city, and in the famous "bridge war" was one of the moving and managing factors. The history of that famous and long-drawn struggle—which might well be called the Epic of Municipal Milwaukee—cannot be fully re-

lated in this connection ; but this much must be said, that from that momentous day in the early spring of 1837, when Solomon Juneau and his associates advertised for proposals for a structure from Oneida street across the stream, until the decisive vote of the people in the second month of 1846, the question of "to bridge or not to bridge," was the one that lay close to the hearts of all loyal Milwaukeeans, and the man who had no voice for or against, was counted too listless for enthusiasm, and too cold for patriotic zeal. To such lengths of feeling did the excitement run that on May 8, 1845, when a crowd of angry men began to tear down the Chestnut street bridge and cast its fragments into the river, the people of the east side gathered in indignant opposition, and a bloody riot was imminent, that only prompt action on the part of someone could prevent. Into this dangerous breach the young lawyer from the east willingly threw himself, and by that wonderfully persuasive eloquence which was afterwards heard from the stump of more than one heated political campaign, and in the climax of many an important case before the courts, was able to calm the sea of rising passion, and to remind law-abiding men who were about to become lawless that their duty lay not in the direction of passion but in resort to legal means for the punishment of unlawful deeds. In the village election of January, 1846, the bridge question was submitted to popular vote, and beside it all other matters of debate or desire were laid aside or forgotten. Among the trustees elected

by the triumphant faction was Mr. Arnold, who from the first had lost view of the prejudices that set the different sides of the river against each other, and favored not only bridges, but any and all other means through which the advancement of Milwaukee should come. When the bridge question finally reached the decision of that tribunal to which it logically pertained—the territorial legislature—the hand of Mr. Arnold was effectually felt in shaping a proper course for the future. The men who had been sent by Milwaukee to the lower house of the legislature in the session of 1845, Byron Kilbourn and George H. Walker, were both opposed to bridges, while the member of the council, James Kneeland, was of an opposite view. The latter bided his time, and in the session of 1846 found himself yet in the council while his friends in the other house had been returned to private life. But they and others were still in active opposition, and when Mr. Kneeland, on the twenty-sixth of January, introduced a bill for the building and managing of bridges in Milwaukee he but sounded the prelude to a long and earnest fight—a contest in which Mr. Arnold stood bravely by his side, and by whose aid and championship the day was at last won. The popular vote on February 12 ended the matter in the direction of peace and progress, and through much travail and tribulation the new structures came into existence.

Mr. Arnold had steadily grown during these years in legal reputation and power, although no large occasion had



yet arisen through which he could show the possession of those peculiar gifts for which he afterwards won renown. The Ross-Radcliffe murder trial that occurred in 1851, where Mr. Arnold's eloquence and consummate skill as a criminal lawyer saved from the gallows one about whose neck the fatal cord was about knotted, was his first appearance in a case that won universal attention and brought to notice his skill in defense. The case was apparently one of cold-blooded murder for the sole purpose of robbery. One David Ross, whose wife had died, turned all his possessions into money, preparatory to leaving the city. This sum of several hundred dollars he concealed about his person in a belt. During the Sabbath day he was seen often in company with one Radcliffe, a man of little character, and in the evening was found in the street in a dying condition. The money was gone, while the wounds upon his person showed that he had been attacked and beaten into insensibility. Many points of evidence pointed to Radcliffe, while the prosecutor, A. R. R. Butler, assisted by the skill of E. G. Ryan, wove about him a network of proof from which it seemed there was no possibility of escape. Mr. Arnold appeared for the defense, assisted by A. D. Smith. The contest waged by these giants in the forensic arena was one of the most thrilling and stubborn ever seen in Wisconsin, fifteen days passing before the final issue was taken from the hands of the counsel and given into that of the jury. The result was less of a surprise to those who had

watched the skill with which Mr. Arnold had directed his course toward those in the box than to the general public. The verdict was one of acquittal. It was upon the announcement of this remarkable decision that Judge Hubbell, who sat upon the bench and was himself convinced that blood lay upon the hands of Radcliffe, was surprised out of his judicial calm, and, fixing his eyes upon the foreman, asked with surprise, "Is that your verdict?"

"It is," was the answer.

"Then may God have mercy on your souls!" came the stern and feeling response from the bench.

This was the first of a series of important trials in which Mr. Arnold was engaged, and it had not been long disposed of before there arose another occasion of far more sensational interest, in which he was enabled to display to better advantage his skill in the criminal branch of practice. On October 14, 1852, as John M. W. Lace, a member of the Milwaukee fire department, stood on Wisconsin street, he was approached by Mary Anne Wheeler, who drew a pistol and shot him dead. The girl was arrested, admitted the shooting, and in defense declared that Lace had been the cause of her ruin.

Murder was at that date more than a ripple on the social surface, to be wondered at to-day and forgotten to-morrow, and the circumstances surrounding the relations of the two were such as to add additional interest to the desperate deed.

Mr. Arnold was speedily engaged for the defense, and although he was assisted by William Abbey of Cleveland,

Ohio, and W. H. Tucker of Sandusky, Ohio—the state in which the parents of the girl resided—it was upon his shoulders that the main labor devolved, and it was due to his skill and management that the life of the girl was saved. The state had a clear case as to the deed, the premeditation, and the malice, and the only ground in which the defense could have any hope, lay in a moral justification because of the relations of the two, and the wrong that had been done. But strong as this might possibly be as a matter of sentiment, or even of justice, it still constituted no defense in law. At that day the plea of “moral” or “emotional” insanity had not become the worn and threadbare thing it is to-day, and was an experiment, the result of which might be regarded with doubt by such as contemplated its use. Few if any cases in which it had been employed were yet upon the books, and never, so far as I can learn, had it been advanced in a western court.\* The grounds upon which the plea could be used in the Wheeler case were meagre, and the materials out of which insanity, even of the transitory sort, could be constructed were very slight. Mr. Arnold decided upon a bold stroke. His real defense, as set forth indirectly in every phase and turn of the trial, was the broad ground that the girl had been justified in the murder, and that by the shedding of Lace’s blood alone, could atonement be made for the outrage put upon her.

\* This defense attracted world-wide attention, and was even cited as an example, in the course of a debate in the English parliament.

To fasten this thought in the conscience of the jury, and yet afford a legal reason for a verdict of acquittal, was the task he set himself to perform. In his opening address, in the examination of witnesses, in his powerful closing plea, and in all possible legitimate ways from first to last, he kept this object in view with consummate skill, and drove his purpose home with power and vigor. The trial commenced on the sixteenth of May, 1853, with Judge Howe upon the bench. The jury was impaneled on the first day of the trial—a result the present would call phenomenal—and the case immediately proceeded. In opening for the defense, Mr. Arnold made an earnest and eloquent speech, a small portion of which I have taken the liberty of quoting, as follows:

I have always supposed from what little I have known of myself, that I was a poor hand to work without some material; that I was a poor hand to set up a sham defense and seriously and earnestly to urge it upon a court or jury. I do not feel competent to do it. I have neither the ability nor the inclination, and if I did not believe in my heart and before my God that the defense which I shall undertake to establish here is genuine, and is well founded, I would take my seat and permit this woman to go to your hands.

In his plea for the defense he made an elaborate argument in proof of such thing as moral insanity, interspersed here and there with many appeals, direct or indirect, for a justification for the deed. The following extracts will suffice as specimens of the tenor and power of the whole:

It has been supposed by some that the fear of death was implanted in the consciousness of man, in order to restrain him from the exercise of that larger share of power with which he is endowed. But all other animals upon our globe have been

created with limited capacities and limited spheres of action. Their power is present. It does not extend beyond themselves, and hence the fear of present bodily pain has been supposed to be sufficient to restrain them within their legitimate spheres. But for man, with a body framed for vigorous exertion in every clime, with a mind unlimited in capacities and unceasing in effort—for man, whose power extends not only to the present but through future generations, some stronger restraint has been necessary than the fear of present pain. It consists in the terrors of that unknown region to which we are all rapidly hastening. A well-spent life, the affections, the sorrows, the tears of those we love, may persuade us of our merit; the principles of proud philosophy may sustain; the hopes of divine religion may console us; but still nature will assert its dominion, and we instinctively shudder at the silence and the gloom of the grave. There sensuality, ambition, malice, revenge, all passion, is laid low in the dust. There the tenderest earthly ties are snapped asunder forever. There Alexander left his worlds unconquered and Cræsus parted with his gold. There Bacon forgot his learning and Newton descended from the skies. There friend is unlocked from the arm of friend, brother from the arm of brother. There the father takes the last look at the body of his cherished son. There the doting mother day by day and night by night moistens with her tears the clod that embraces her darling infant in its bosom. . . .

We say that the victim of seduction, with slander upon her good name, with her character robbed from her, with her hopes blasted, under disgrace, infamy, desertion, betrayal, bleeding at every pore of head and heart, in a sudden overwhelming impulse of derangement, upon meeting her seducer, took his life and avenged her wrongs before God and man! There with her own right hand hath she gotten herself the victory! And Læta! Let no tears be shed over his grave. By his conduct, by his vices, by his crimes, he had excluded himself from the protection of the law and from the protection of all cultivated society; had shown himself to be a man no longer worthy of the confidence and the respect of men or the love of woman—and I say here for myself that it will be justified! It is justified in the judgment of the world; in the judgment of all men who have a heart beneath their breasts, who are men of honor or of courage, who reverence the female sex, who love the mother that bore them, and who love their wives, their sisters and their daughters. It is justifi-

fied that her timely arm, which had clung around his neck in love, should itself be the instrument that in an instant should send his damned and coward soul—to heaven or hell!

The trial was concluded on May 26, and resulted in a disagreement. The second trial commenced on June 5, and after a legal battle of even greater power and earnestness, resulted in the verdict of "Not guilty, by reason of insanity." The popular opinion as to Mr. Arnold's share in the result was well voiced by the Milwaukee *Sentinel* of the following day, which said:

Mr. Arnold bore the brunt of the fight, and proved himself throughout a consummate tactician and most successful advocate. His whole plan of operations—the real attack made under a feigned issue—his admirable opening and summing-up in the first trial and the far surpassing effort at the second trial, enhanced his reputation as one of the first criminal lawyers of the west. His closing effort in behalf of the prisoner on Saturday afternoon was compact, logical, well arranged, earnest, and at times most impassioned.

The same year, 1853, saw Mr. Arnold a participant in a great case of a far different character, and before even a larger popular audience than that which had watched him in the trials above described. It was as one of the counsel of Judge Levi Hubbell, in the impeachment case which his enemies had instituted against him. The outline of this case has been already given in these pages,\* and space need not be taken for a recapitulation. The defense was conducted by Mr. Arnold and his associate, Mr. James H. Knowlton, with calmness and good judgment and with a bearing of good

\* MAGAZINE OF WESTERN HISTORY, April, 1887, page 832.

temper and manliness that could not but have an influence upon any court. The trial ran from June 6 to July 11, and was watched with the keenest interest by the entire commonwealth of Wisconsin, and ended in acquittal. Mr. Arnold confined himself throughout to logic, law, and proof, and made no efforts to sway his senatorial jury by any unusual flights of eloquence or display of oratory. There are some points of his address in opening that can well be quoted as evidence of his power when upon the floor. He said:

It has been said by the learned counsel for the managers (Judge Ryan) that this proceeding is a solemn one; and theoretically I concur in the truth of this remark. It is indeed a solemn thing when a sovereign state calls upon one of its public officers to respond to criminal accusation against his conduct. It is solemn, not only on account of the character of his accusers but on account of the consequences that may impend over himself.

But sir, when I survey the whole case with the eye of cool observation; when I measure its height and depth, its length and breadth; when I reflect upon the motives of its inception, the spirit of its prosecution and the proofs that are before you—although it may be a solemn matter to the state, from the time, the perseverance, and the malevolence devoted to it, and important to the respondent as its chosen victim, I feel constrained to believe that it is *now* in the judgment of the law what it soon will be in the judgment of the world—an imposing mockery.

The power of impeachment is indeed a tremendous one, and may not inaptly be compared to Goliath's sword, kept in the temple, never to be used but on great occasions. You will find in but too many instances that in its mad spirit it has confounded the innocent with the guilty—you will find in but too many instances that it has sacrificed illustrious victims to the spirit of relentless persecution—you will find in but too many instances that it has poured out the blood of patriots as an atonement to the demon spirit of party—you will find but too many instances of oppression, of cruelty, and of foul injustice that would extort from any mind the concession that it is

indeed a tremendous power; and even in our own land, where the safeguards of law are so well thrown around, not only the private citizen, but the public officer, it is still a fearful power. It speaks in the name and with the potential voice of the people. It commands all the resources, energies and treasure of the government. It enlists all the genius and talent and eloquence of counsel quickened, it may be, by a sense of malevolence, and inspired, it may be, with the love of fame. It may throw around the respondent a network of circumstances and of proof that almost baffle explanation. It may kindle around his devoted head a blaze of prejudice and of passion, which may, for the moment, swerve reason from its throne and enfeeble the power of truth; and the victim, alone and helpless, may, day after day, be the object of ridicule, of contempt and scorn; and he must seal his lips in reverential silence, and if perchance he sheds a tear over the mistakes, the falsehood or the malice of his accusers, the foul accusation follows him through the streets, that that tear which anguish has wrung from his eye, is but the tear of dissimulation or of confessed guilt!

But I tell you that though you may torture the victim, he is not yet wholly within your power. Neither his life nor his reputation are within your grasp. Thank God his accusers are not his judges; but to this body—to this court—cool, deliberate and independent—to this court, made up of the intelligence, and the wisdom, and the independence of the state, he now appeals with unshaken confidence and with manly courage, to hurl back the accusations of the prosecution, and to vindicate his innocence before the world.

The following year saw him connected with the celebrated Glover case,\* as attorney for Garland, the Missouri slave-owner, in proceedings against Sherman M. Booth for recovery of the value of the slave whom the latter had aided to his freedom. The side upon which he had been retained was not the one to give him chance for a display of his powers, and little can be said concerning it except that he advocated the enforcement of the laws as

\* For details concerning this famous trial, see sketch of Judge Byron Paine in this issue.



he understood them to be, and showed himself no more conservative than many who afterwards stood in the most advanced abolition ranks.

In 1856 he made still one more appearance in a contest of historic importance, and out of which dire trouble was for a time threatened. At the general election in 1855, the candidates for governor were Coles Bashford on part of the Republicans and William A. Barstow for the Democrats. The latter was at that time incumbent of the gubernatorial office. Upon the count of the votes it was plain that all the Democratic candidates had been chosen, except the head of the ticket, concerning whom the vote was close and the result doubtful. Both parties made vehement claims to victory up to the day for the official returns, when the board of canvassers made official declaration that Barstow had been elected. The decision was received with vehement and indignant protests from the opposition, and charges publicly made that the board itself had connived at deception. Bashford resolved upon a contest, and the word went abroad that should Barstow insist upon an inauguration before the matter was settled by due process of law, he would be resisted by force and the capitol seized. To meet any possible action of that character, the governor sent for troops and prepared himself for defense.

January 7 arrived, and the inauguration was peacefully accomplished. Bashford also took the oath of office, which was administered by no less a personage than the chief-justice of the Wisconsin

supreme court. The legislature convened on the tenth. It had a Democratic majority in the assembly, and a Republican in the senate; and true to the instincts of politics, the former body recognized Barstow as the legal governor, while the latter counted him as governor *de facto* and no more. The whole question was carried to the supreme court, and measured by the calibre and reputation of the men who had part therein, the contest was one of the most remarkable and interesting ever conducted in the west. On the Bashford side stood Timothy O. Howe, Edward G. Ryan, Alex. W. Randall and James H. Knowlton; while in opposition were such giants as Matthew H. Carpenter, Johnathan E. Arnold and Harlow S. Orton. The result was a decision for Bashford, who entered peaceably upon the discharge of his duties. Mr. Arnold carried his full share in the case, although it was one that required the cold logic of the jurist, rather than the fire and heat of the advocate.

While the above cases are cited as among those of chief note with which Mr. Arnold was identified, it must of course be remembered that they are but few of the many in which he had part. From early in the decade of 1840-1850 until his death, he was one of the busy men at the bar, and his services were in constant demand.

A brief reference has been made to Mr. Arnold's political experience in the early days. In early life he was a Whig, and remained such until the dissolution of that party when he did not definitely attach himself to any political organi-

zation. He voted for Fillmore in 1856, not because the latter was the candidate of the American, or Knownothing party, but because he had no desire to support the candidate of either of the other parties. In 1860 he supported Bell and Everett, although himself the Democratic candidate for congress. In 1864 he voted for McClellan, and for Seymour in 1868. He had more than an admiration for Henry Clay, and in 1851 we find him president of a local club formed in honor of and named after that old chieftain. It was in the year following that occurred one of the most interesting passages of his life, and what may be called the most dramatic of his public appearances. In 1852, he was one of the delegates from Wisconsin to the Whig national convention at Baltimore—the last grand gathering in such capacity that the old party was to see. While a majority of the delegates from Wisconsin favored General Scott, Arnold cast his vote steadily and faithfully for Daniel Webster, clear up to the fifty-third ballot when the general was declared the nominee; and upon that conclusion could not conceal the foreboding of disaster which he was sure the choice had involved. Upon his arrival home he declined to declare himself, and the local Whigs, who by no means undervalued his influence and were anxious for the aid his eloquence upon the stump could give, were anxious that he should speak openly and commit himself to the party nominee. A meeting of ratification was appointed, and he was made one of the speakers; it being reasonably guessed that when once upon

the platform his party loyalty would overcome all personal dissatisfaction and cause him to speak boldly for his side.

When the appointed evening had arrived and the time come for his appearance upon the platform in the old city hall, he was at his post and slowly and earnestly proceeded to give an account of his stewardship in the grand convention of which he had been a part. With unusual feeling he next dwelt tenderly upon the memory of Henry Clay, who had recently died; and then warming as he advanced, described with eloquence and fervor the character of Webster, and told what he would have done had he become the nominee of the party and an occupant of the seat of Washington and Jefferson. The audience was electrified and moved, as men seldom are, and answered responsive to every mood of thought or emotion in which the orator indulged. As he proceeded, the friends of Scott grew warmly certain that the climax would come in a set endorsement of their chosen leader—when Arnold paused, and as a hush of deep silence fell upon the house, continued, in a voice shaken with emotion:

In the late convention at Baltimore I voted for Mr. Webster for President fifty-three times! *Were the balloting still in progress, I should be voting for him still!* I now leave it for some gentleman with more enthusiasm than I possess, to do justice to the merits of your candidate, General Scott!

In the disintegration of old party lines caused by the birth of the great Republican organization, Mr. Arnold found himself almost without a party home, and although he opposed the election of

Lincoln and believed that the anti-slavery agitation so rapidly developing in the north was a serious menace to the good of the country and in violation of the spirit and intent of the national compact, he was one of the first to speak in support of the old flag when the rebel guns of Charleston harbor were turned against it. In 1860 he had been the candidate of the Democratic party of the Milwaukee district for an election to congress, and the contest was tinged by the earnestness and bitterness of that great year of struggle that presaged the early lowering of the clouds of civil war. Hon. John F. Potter was the Republican nominee, and was elected. This result did not deter Mr. Arnold from a prompt response when a call upon his patriotism was made in the early days of the war. On April 19, 1861, the loyalty of Milwaukee found a medium of open and public expression in the presentation of a flag to the chamber of commerce, and the occasion was made one in which men might declare themselves, and announce to the world which side they were on. After Matthew H. Carpenter and other prominent men had spoken, Mr. Arnold was seen upon the balcony and called for by the waiting thousands. In his response he said:

I am glad that the day of politics has gone by, and that the day of patriotism is at hand! It is fitting to raise that flag—it is fitting to raise it everywhere—it is eminently fitting to raise it just where it is to-day! . . . Our first duty is to our country, to aid the administration in power, whatever may be its politics, in enforcing the law, in maintaining the Constitution, and preserving, if possible, the integrity of the Union. . . . It is well for us to meet together to-day, to unite heart and hand in a common cause, to renew

under that flag our vows of patriotism, and our determination to carry it in triumph over every state of the confederacy which it represents!

Later in the same month he spoke in the same strain at a recruiting meeting, and although not so advanced as some in support of all the measures instituted by the north, he showed that his heart was in the right place, and that his faith in the eventual salvation of our country was secure.

Mr. Arnold's official connection with the organized bar of Milwaukee was a feature of his life that must not be passed over even in a sketch of exceeding brevity. When the Milwaukee Bar association was organized on June 11, 1858, he was elected its first president, and filled that responsible position\* until the day of his death. This continuation in so important a trust would not have been possible had he not been fitted by nature and education for its proper discharge. His most marked features of personal action in this office were his kindness to young or unfortunate lawyers, and the extreme solicitude with which he saw that the latter upon death were given proper burial. He was the first to hear of any case of this character, and by subscriptions, or assessments made upon his own responsibility and to which no one demurred, saw that the needed means were forthcoming and that the duty of the bar to its unfortunate member, had been generously performed. He was also a member of the Old Settlers' club, a

\*The Milwaukee News, on Mr. Arnold's death, happily stated a fact apparent to all: "As the head of that organization, he seemed almost to have been born to confer grace and dignity upon the place."

director of the Milwaukee Law Library association; and in early days was one of the executive committee of the Milwaukee Lyceum. He was an earnest and willing worker in aid of any cause he espoused, and was one of the men by whose labors the city got properly to work under its charter.

While he had given time and attention here and there to matters of political or general interest, it was as a lawyer that Jonathan E. Arnold was best known, and he continued the steady practice of his profession up to the day of his death, which occurred on June 2, 1869. While in the midst of an active career, and without premonition, the fatal shock came and laid him low. There had been no signs of warning by the enfeeblement of any faculty. He had been in his usual health, and was attending to the daily routine of business. A few moments before his death he had been in the law office of Messrs. Emmons & Van Dyke, looking after some legal affairs, and seemed cheerful and in excellent spirits. Soon after reaching his office he was seized with the fatal malady, heart disease, and expired almost instantly. When friends who had been alarmed hastened to his side, it was too late for consolation or help, as the spirit had forever forsaken its tenement of clay.

The news of his death was received with general expressions of sorrow by the people of Milwaukee, and the sentiments uttered by leading members of the bar, and the resolutions adopted, in a meeting called for that purpose on the afternoon of June 3, were sincere and

freighted with the feeling that no matter what faults might be laid at Jonathan E. Arnold's door, he was a man of learning, of great ability and of the strictest honor, and that in his death one of the notable men of Wisconsin had passed away. Among other strokes in delineation of his character in the memorial adopted on that occasion, was the following:

*Resolved*, That while we know as a matter of history that Mr. Arnold was one of the pioneer members of the Milwaukee bar, and from the beginning took foremost rank alike in the court, the legislative hall and the popular assembly, yet he is particularly endeared to this association because in all his professional life he was a model of professional conduct, and contributed not merely by his brilliant intellect and polished eloquence, but by his professional honor and admirable professional manners, to elevate the bar of this city, to produce and preserve its fraternity, and to give it that desirable reputation for which it has long been distinguished.

The funeral occurred on the Saturday following and was held in St. Paul's Episcopal church, and from thence his body was conveyed to its long resting-place in Forest Home.

The husk, the outer shell of a life—like that of the corn yet standing in the field—can be seen of all men, and passes only for the good or the harm it may do, or the influence it may have upon that which is around it. That within has chief concern to him to whom it pertains. In noting the career of a public man, it is no difficult task to follow the lines of life along which he lived, to recount his deeds, to mention his entrance and exit, to discover the estimation in which he was held. To paint the man himself is a matter of more moment. In any relation touching



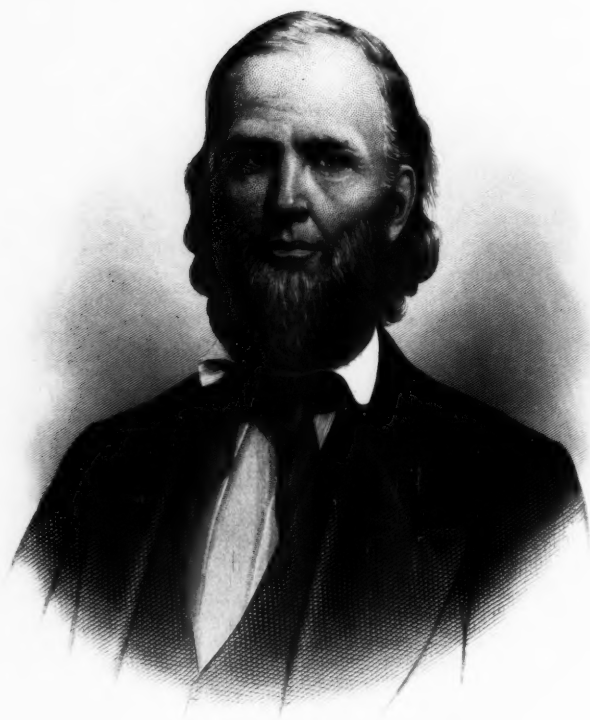
Jonathan E. Arnold, one could not be more amiss than to paint him in eulogistic colors, forgetting the darker lines that lay across his life and the lack of certain fixed principles, by the possession of which he would have been one of the model figures of his day. That blame lay upon him because of these faults, one cannot doubt; and yet extenuating circumstances are loyally pressed by those who knew him best, and had reason to understand that troubles of a character to wear upon one of his nature had laid their hands upon him, and had left their traces in the outcome of his life.

As to the legal life of Mr. Arnold there can be but one opinion. His almost uniform success at the bar is an answer on that point. His practice has been described as "a long list of legal triumphs." As a criminal lawyer he had few equals. He was endowed with an intellect of surpassing keenness, to which additional power had been given by education, culture, great classical learning, and knowledge of books and men. As was said by one who had known him for years, in the memorial meeting of the bar: "If you saw him in a criminal case, you would say he was eminent as a criminal lawyer. If before a jury in a difficult civil action—if you noted his adroitness, his perseverance and good taste in eliciting testimony, his admirable manner of presenting the facts to the jury, his attractive and powerful eloquence, his strong and convincing logic, you would feel that the department in which he should shine. But if again you saw him in the supreme court in a

case requiring close argument and legal logic, and noted the skill with which he had drawn out his points and the clearness with which he presented them, and the argumentative power he brought to bear upon the judge of the court, you would say that this was his proper field." His legal arguments were strong because they were so clear, so close welded, so free from flaws and imperfections. He had that magnetic power over men which caused the jury to trust him from the start, and to fall insensibly under his influence. His judgment in the selection of a jury was almost infallible. In the conduct of a trial he never went above the knowledge of the men he addressed, but, so to speak, pressed the jury a little ahead of him. Of nervous temperament he left many things to intuition where a more methodical man would have grounded himself in fixed knowledge. He was not considered a diligent reader of law, but when he wanted an authority or a point of information, he knew where to find it as if by instinct, and that by the most direct path. When the ground upon which he based himself was of a character that his judgment and heart could endorse, he was a power in argument that made itself felt.\* He was a natural orator, who always had himself in command, and could think better upon his feet than in the quiet of his study. He was a good pleader and well

\*A member of the Milwaukee bar said to me: "I was at one time opposed to Mr. Arnold in a breach of promise case, in which he was for the defendant—the wrong side for him. Had he been on the other side, and therefore more at his ease, he would have made a wonderful plea."

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W. L. G. & W. L. G. & W. L. G.

Byron T. T. T.

versed in knowledge of the common law. At the bar he was known as a close, safe lawyer; a calm but deep cross-examiner who could win the confidence of a witness and then turn him inside out. He reveled in the controversy of the court room, and always claimed to be ready for a hearing. He was essentially a trial lawyer, in the full meaning of the term.

In his personal relations and character, this feature seems to have impressed itself upon one who was as close to him as any man now living: "He was a sad man—one whose whole life seemed to have acquired a tinge from troubles or disappointments he could not make known to the world."\* Yet he was genial when in the company of personal friends, his heart was as tender as that of a woman, and his manner to high and low, to rich and poor, was that of a courtly gentleman of the old school—a manner not studied or artificial but a part of his very nature. He carried a natural sense of dignity into all his intercourse, both public and private, and no matter how near his heart a friend might stand, he was never close enough for familiarity. He did not possess a keen sense of humor, and those who turned a weapon of that character against him were met by such calm and earnest dignity on his part that the experiment was counted a failure, and seldom repeated. Toward

the latter part of his life he was drawn more and more for companionship toward the younger members of the bar, as if to give them encouragement, and that he might renew in their hopes, those that had been fulfilled or disappointed in himself.

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BYRON PAINE.

The salient features in the life of Judge Byron Paine may be briefly noted—that while still a young man, with his own future yet to care for, he faced an uncertain popular opinion and made a brave and brilliant fight for a cause that he believed to be right, in a case that has become historic; and that as a judge upon a high bench he showed such noble qualities of mind and conscience that no one can say to what promotion he might not have risen had not death laid him low almost in the beginning of his career. His memory has been guarded with reverent affection in the commonwealth he served, and no son of Wisconsin has a more honored place in her pantheon of great men than this brave advocate, obedient soldier, and unblemished judge.

The outspoken fearlessness which was one of the features of Judge Paine's character, was after the pattern of the still more outspoken courage of his father, while the moderation with which his views were urged upon others, and the calmness with which he could meet opposition, were something of which his father had small possession. The latter had spent the early years of his life in the east, had entered upon the practice

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\*One deep sorrow of his life was known. During his last congressional canvass, he met with a severe affliction in the loss of his youngest son on the ill-fated *Lady Elgin*,—a boy toward whom the father's heart had gone with peculiar affection, and whose sudden death seemed to cast a shadow over all his after life.



of the law, and made his home at Painesville, Ohio, where Byron was born on October 10, 1827. James H. Paine had become filled with the belief that human slavery was a wrong in the sight of God, as it should be a crime in the laws of man, and as the secretling of a moral view was one of the things impossible to his nature, he vehemently and publicly denounced the involuntary servitude system of the south. It seems curious that a time should have ever been when one could be too strong an abolitionist for the Western Reserve of northern Ohio—the region from whence Joshua R. Giddings and B. F. Wade were afterwards sent to fight slavery in the halls of congress—yet such the elder Paine soon found himself to be; and because of his unpopular course in this regard he lost practice, and was led to seek a home in the far west. In 1847 he removed to Milwaukee, where he followed the practice of his profession until his death in 1879. He continued his vehement denunciation of slavery, and it was through his example and teaching that the son was led to an early advocacy of freedom for all men, and finally to the charge of a case from which his professional career may be said to have commenced.

Byron's education was received in an academy at Painesville, and he accompanied his father to Milwaukee where he entered upon the study of law, and was soon afterwards admitted to practice. Possessed of an unusual literary faculty, he spent some portion of his time in these early days in work upon the *Free Democrat*, one of the earliest abolition

newspapers of the west. He also served as a clerk in the Wisconsin senate for one term.

In the first years of practice, the young man was known to his associates as faithful and capable, but not inclined to push himself into notice, nor disposed to seek for business. He was moved more by his convictions than by his ambitions, and as likely to defend a cause because he believed it to be right, as to take a case because it might be of profit. But he possessed all the capabilities for a successful advocate and a great lawyer, which should only be awakened and recognized when some fitting opportunity should present itself.

The occasion came, and the man was ready. The Glover rescue case, and the trials of Sherman M. Booth that grew out of it, are a part of the history of Wisconsin, and a familiar tale to the older residents thereof; but some explanatory details will be necessary for a full understanding of Mr. Paine's connection therewith. Mr. Booth was one of the most outspoken of the opponents of slavery, and had made a name for himself in that field of labor before coming to Wisconsin in 1847, to take charge of the *American Freeman*, an abolition newspaper published under the auspices of the State Liberty Publishing association. Joshua Glover, a black man, an alleged fugitive from an owner in Missouri, was laboring in a mill at Racine, in the spring of 1854, when the owner, one Garland, suddenly made his appearance, and caused Glover's arrest. He was hurriedly carried to Milwaukee, which was reached on

March 11. Word was immediately conveyed to Mr. Booth by sympathizers of Glover, and he made such investigations as led to the discovery that the slave was then in Milwaukee jail, bruised and bloody, and carrying marks of severe treatment at the hands of his captors. When the facts became known through the efforts of Mr. Booth and others, the excitement reached fever heat, a public mass meeting was held, a vigilance committee of twenty-five appointed, and resolutions adopted declaratory of a purpose to aid the kidnapped slave by all means within their power. The result was that before many hours had passed, a rush of many strong-armed men was made upon the jail, the negro taken out, placed in a wagon, and hurriedly driven out of the city.

Several days later Mr. Booth, as leader of the rescuing party, was arrested, and after a preliminary hearing, was held to bail in the sum of two thousand dollars, which was promptly furnished. Suit was also commenced against him for damages to the amount of two thousand dollars, the value of the escaped slave.

It would be foreign to the purpose of this sketch to follow these various suits, and all that grew out of them, to the end, and we need touch only upon such points as involve the presence and services of Byron Paine. The rescue of Glover and the arrest of Booth had attracted attention from the whole country, and had Mr. Booth desired, some of the ablest and most eminent anti-slavery lawyers of the north would have appeared in his behalf, but it was his

choice that the young, and as yet almost unknown barrister who had been his associate and friend, should take up the weapon in his behalf.

Mr. Paine threw himself into the case with all the earnestness of a deep nature that had found an occupation where desire and conscience could work together. The defense of his client as he presented it to the various courts before which he appeared, was masterly, original, and full of profound logic. In illustration of one curious phase of American politics at that date, it may be noted that this earnest abolitionist, in the defense of another of like belief who had violated the Fugitive Slave law in the rescue of a slave who had been taken under the forms of that law, stood upon the ground of ultra state rights, and upon that line was fully abreast of Calhoun and his associates of the extreme south! And it was upon that ground that his defense was made—that the sovereign state of Wisconsin was so supreme within her own moral and legal responsibility that the legislators of the United States could not compel her citizens to surrender a slave who was such under the laws of another state. That one man should have held this view can cause no surprise, but that he should have caused the supreme court of Wisconsin to declare that his idea was good law, proves the logical character of his plea, and the eloquence and force of his argument. Another curious thing to be noted is that Wisconsin, from the first one of the strongest anti-slavery states, had a marked leaning toward states' rights doctrines, and that just

before the war the Republican party inclined in that direction, while the Democratic was in the opposite. This idea was soon abandoned when the war showed the north what it meant when reduced to practical operation.\*

The case was carried into the supreme court in May. The complaint against Booth was that he had violated the seventh section of the Fugitive Slave act of 1850 by aiding in the rescue of Glover. After giving bail Booth had been surrendered and sued out a writ of *habeas corpus* to be released, chiefly on the ground of the unconstitutionality of the act. The hearing was set for the twenty-ninth, and it was upon this occasion that the young barrister made the argument that gave him fame and honor, and was the stepping-stone to high judicial honors in the future.

His speech was long, profound, and full of many evidences of deep study and earnest thought. It is regretted that only a few isolated quotations, as evidence of his method of thought and speech, can be given in this connection. In opening he said:

In arising to commence the investigation of this case, I do so with those feelings of strong embarrassment which must naturally result from knowing that I undertake to deal with a question more important than any that could be presented to a judicial tribunal. It is a question in which, according to my judgment, are involved, not the liberties of Mr.

\* Judge Paine held the opinion to the day of his death, that the south, or any portion of the Union, had the legal right to secede, provided it could show good grounds for such action. In the Rebellion of 1861 he believed that the grounds alleged did not constitute a sufficient reason, and it was only because of that view that he became a soldier in the Union army.

Booth alone, but the liberties of the whole people. I am also not unaware that it might involve a conflict between the judicial powers of the state and federal government. Because the validity of a law of the United States will be called in question here. A law in relation to a subject that has lowered like a dark and gloomy cloud above our political horizon, from which have blown those winds that have tossed the public mind and heart in wild commotion, as the ocean is tossed by the storms of heaven. A law in relation to a subject that stood like a stumbling block in the way of the formation of our government, a subject that has cursed us in the past, curses us in the present, and looms up as our evil genius in the future, waiting to attend us to destruction. I need not add that we are to call in question the validity of a law in relation to American slavery. And, sir, we shall question its validity, for the reason that congress, in passing it, transcended its constitutional power and encroached upon a right that belongs solely to the states.— And this is another reason that makes the question pregnant with importance. For under our system, composed of many independent sovereignties, joined in one whole under a general government which has certain delegated powers; any question involving a conflict between the powers of the whole and of each sovereign part, must be of vital interest. It should be approached with solemnity, with anxious care, with moderation and forbearance.— But, sir, in my judgment it should be approached unshrinkingly! I am not one of those who believe that the possibility of such conflicts should be avoided by servile submission from the states. I am not one of those who believe that a state should forbear to assert its rights, for fear that they may be questioned elsewhere! I do not belong to that school, of late increasing among us, which seems to teach that the states are to look up to the department of the federal government, with all the submissive deference with which a serf is to listen to the commands of his master. On the contrary, I belong to that other, and as I believe, that true school, which has best studied the theory of our institutions, and which holds that the true interests and harmony and perpetuity of this Union are to be best promoted and preserved by confining the general government strictly to the exercise of those powers delegated to it by the constitution, and steadfastly resisting all encroachments upon the rights of the states. We plant ourselves upon the doctrine of the sovereignty of the states, over all matters except those which

they have delegated to the general government power to control. . . .

We stand, therefore, here to-day upon the doctrine of state rights, though we do not attempt to deny that it is a doctrine surrounded by difficulties—difficulties on both sides. As to how these difficulties are to be avoided, different men give different answers. Those whose minds incline them toward consolidation, will answer that they are to be avoided by absolute submission on the part of the states. Those, on the other hand, who look with jealousy upon the federal power, will say that they are to be avoided by each carefully and scrupulously abstaining from encroachment upon the rights of the other. They might say, with Judge Story, that "the part of true wisdom would seem to be to leave in every practicable direction, a wide if not an unmeasured distance between the actual exercise of the sovereignty of each." Or they might, perhaps, rather answer as one of the great political parties of the country, which has adopted the doctrines of the Virginia and Kentucky resolutions which I have read, has answered, and say that they are to be avoided by a strict construction of the constitution by all the agents and departments of the general government, and that it "is inexpedient and dangerous for congress to exercise doubtful constitutional powers." And now, sir, I come to the application of the doctrines I have contended for to this case. . . .

The relator, Sherman M. Booth, was complained of under the seventh section of the late act of congress, commonly called the Fugitive Slave law, for aiding in the escape of one Joshua Glover, from the custody of Deputy Marshal Cotton, Glover having been arrested as a fugitive from labor. He was examined and held to bail. He was afterwards surrendered, and sued out this writ to be released from imprisonment, chiefly for the alleged reason that the act of congress is unconstitutional and void. In appearing here, we feel that we have crossed the threshold of our last refuge. We believe that the state courts may protect us if they will. That by a wise and firm interposition of their powers in behalf of the liberties of the people, they may present a barrier between those liberties and that spirit of oppression that is abroad in the land. That they may perform for us the kind office of the guardian shaft, that, reared above our dwellings, points fearlessly to the clouds, and receives upon itself unscathed, the rattling thunders, that otherwise had dashed us to pieces! And our hope in this respect is justified in a degree, by the fact that we stand here at all

this day, and that the United States officers are here to give account to this court concerning our imprisonment. Because it has lately been declared here by those officers, that they would not condescend to render such account at all, and that whenever they seized upon a citizen, it was little better than an impertinent interference on the part of the state tribunals to enquire of them, "Why do we so?" These doctrines fell upon the public mind like strange and unheard of signs in heaven, filling it with horror and alarm. And it is doubtless to the prompt and decided manifestation of that horror and alarm by the people, and to the resistance of our state judiciary, that we are indebted for the fact that the United States officers have receded from their position, and have appeared here to render a reason to this court why they imprison us. And we believe that the power of the court does not stop here, but that if satisfied that the reason is insufficient, it may discharge from custody the citizen whose liberty has been unjustly invaded, and thus afford a peaceful and bloodless remedy for the dangers that impend over us. But if we fail here, we can go no farther. Here is our "butt and very seamark of our utmost sail!" If the people are driven unprotected from their state courts, the cloud that will settle down upon them can be lifted only by the dread ordeal of revolution, when falling back upon their reserved rights, amid scenes of violence and blood, they alter or abolish those governments that have failed to answer the great ends for which all governments are established.— Since, therefore, the stake is so great, we beseech this court, as we believe it has every inclination to do, to listen with attention to the reasons we may present, and with patience towards the imperfect and perhaps tedious manner in which we may present them in order that, if possible, the last hope of liberty and the people may not fail.

I shall urge the unconstitutionality of the Fugitive Slave act upon three grounds:

First, that congress had no power to legislate upon the subject at all.

Second, admitting such a power, the act is unconstitutional in providing that any person claimed as a fugitive, may be reduced to a state of slavery without a trial by jury.

Third, that it is unconstitutional because it vests the judicial power of the United States in court commissioners contrary to the provisions of the constitution.

There are doubtless other good grounds of objec-



tion to this act, but I shall confine what I have to say to these three, believing that if we fail upon these, there would be no hope of succeeding upon any.

In support of these propositions Mr. Paine proceeded with an array of facts, authorities and legal deductions apparently unanswerable. In speaking of the rights of the general government and the states he said:

Thus has it been with the federal and state governments. In setting in motion the vast machinery of the new system, each endeavoring to accomplish those objects which pressed most forcibly upon its attention, they have frequently encroached upon the rights and prerogatives of each other. The encroachments have in some instances been rectified, but in others they have been acquiesced in, and the boundary lines between the two systems have been made crooked. The subject we are to consider here belongs to the latter class. And I fear this encroachment has been acquiesced in more readily than it would otherwise have been, because it was imagined that it concerned only the rights of a class of people who were poor, persecuted, despised and outcast among us. But the time has now come when it concerns the liberties of us all, white as well as black, that these boundary lines should be re-examined, and the respective rights of the federal and state powers in this matter should be placed on their true basis. For the people are overshadowed with clouds of prosecutions, swarming with pains and penalties as numerous as the locusts which swarmed over Egypt; and it has become of vital interest to them to know whether the power for these things is really found in the constitution, or be nothing better than a barefaced usurpation.

In conclusion he made use of language that, uttered years before the war of the slaveholders, seems in the light of after events to have been almost prophetic:

We are accustomed to look upon our country as having already attained a very great degree of power and importance. This is in a sense true. But we have only to travel forward for a century or two, at the sober place of reason, unassisted by the wings of imagination, in order to behold it bestriding this

continent like a Colossus—possessing a power compared with which, that it now possesses, would be like the pigmy compared with the giant. Emergencies will doubtless arise in the course of its national existence that will call into being vast armies and navies. And if the general government is under the control of the slave power, these armies and navies will be under its control. And who can doubt that that power is capable of conceiving the fell purpose of annihilating liberty through all these states, and extending over them its own horrible institutions? Who can doubt that after conceiving this purpose it will carry it into execution by the iron arm of military power? It will do this, not with the avowed purpose of overthrowing the constitution, but pretending that it sanctions their sacrilegious design. . . . But let us hope that this destiny may not await us!—That among the inscrutable ways of Providence, some one may be opened by which this cup will pass from our lips. Let us maintain to the last some hope that liberty may not be entirely destroyed—that the cause of humanity may not entirely fail! And though the clouds are gathering faster and blacker above us, we fare not altogether without reason for such a hope! For a number of years past there has been another reaction going on in this country against the influence of the slave power. And though the tide has ebbed and flowed—though in the actual conflicts, that power has retained possession of the battle field, yet the reaction against it has steadily increased and accumulated strength until the present day. The freemen of the north who have long reposed in conscious strength, with a generous forbearance towards the wrongs and insults of their deadly foe, have at last become aroused by provocations that could not be borne. They are marshaling their hosts for the coming conflict, between the two great antagonistical elements, liberty and slavery, that is to settle which shall finally fail before the other.—The trampling of the gathering hosts is already heard—the murmuring of the rising storm is wafted upon every gale. The north is snapping asunder the bands that have bound it in subjection to the slave power, as Sampson broke the withs of tow! The last link that binds it, is the judicial sanction that power has received! *Let that be broken and the people are free!* Can it not be broken? Can this great want of the public heart not be satisfied? Can we not have one decision in all this land that shall vindicate liberty and law? I could almost believe that the angels in heaven would bend forward over its battlements in eagerness to

hear such a decision! That unborn generations would anticipate their time of life, and listen from the great womb of futurity, to the announcement of such a decision. But whether these things would be, or not, this I know, that it would be received by all the friends of humanity and law throughout this land, with such a thrill of heartfelt joy, as was never felt by a people before. Their hearts would be filled with new hopes—hopes that this would be but the beginning of a more glorious end. Hopes that there is to be a return to the true principles and wise policy of our fathers; that the constitution as it stands is to be vindicated and maintained—that courts are to be places where liberty is favored and human rights protected, and not where judges are to exercise their ingenuity, to evade and overturn the great safeguards of the constitution and trample on the liberties of the people! Their hearts would be filled with new and glorious hopes, that this Temple of Liberty, which our fathers builded, is to be purified. That the traffickers in the blood and bones of immortal man shall be driven from its sacred precincts; and that with a broad continent for its broad foundation, and the blue heaven that bends above us for its arch, it shall be inhabited by one great band of brothers, with no spot where the darkness of bondage shall remain—but that all over, from ocean to ocean, and from the eternal ice mountains of the north, to the burning zone, it shall be illuminated by the light of liberty, as the Celestial City is lighted by the glory of God!

The court, upon the conclusion of the arguments, agreed to Mr. Paine's construction of the law, and ordered the release of Mr. Booth; and, although he was afterwards convicted under the rulings of the supreme court of the United States, which held an opposite view, the masterly character of the young lawyer's defense was none the less admired and its wonderful strength admitted. Quoting the voice and verdict of contemporary public opinion,\* we are told that "he gave untiring labor, earnest zeal, and magnificent ability to the advocacy of his views,

and made an argument which could not be answered upon reason, although it might be choked by weight of authorities. It delighted his friends, it carried with him the court, it captivated the popular mind. It secured judgment for his cause, and for himself the respect of his profession, and the lasting favor of the people, among whom it was extensively read. And although his opinions were very distasteful to many, they made him no enemies. His sincerity, his moderation, his fairness and evident devotion to truth disarmed opposition of personal bitterness. He obtained the confidence of his political antagonists, as well as the enthusiastic admiration of his supporters. He made no effort to secure personal advantage from his triumph, but retired to the quiet practice of his profession unaffected by the praises heaped upon him. He seemed not to know how much he had done for himself."

In this connection, and as giving support and endorsement of the highest character to what has gone before, I cannot refrain from quoting the comments upon his conduct of this case, made by Judge E. G. Ryan, when the resolutions in honor of Judge Paine's memory were presented to the supreme court in January, 1871:

When I first met Judge Paine at the bar he was still a young man, but he had already given unmistakable evidence of the power that was within him. The first opportunity I had of forming an estimate of his high ability was in the famous case under the Fugitive Slave act in 1854 and 1855. He was employed for the defendant, I for the United States. We both brought to the case not only ordinary professional zeal but all the prejudices of our lives. He was a frank and manly abolitionist; I was as decid-

\* Milwaukee Sentinel.

edly what was called "pro-slavery." We were both thoroughly in earnest. The case was attended with great popular excitement. It was one of many unutterable sounds of troubled elements, foreboding the great storm which has since passed over the country. He died undoubtedly believing that the results had justified his views. I shall probably die believing that they have justified mine. I thought him a fanatic; he probably thought me one; possibly we both were. But in all that antagonism and excitement I could not fail to see, I could not fail to do justice to the integrity of his motives, or to the ability of his conduct. I then conceived an estimate of the beauty of his character, and of his great professional ability which has never since changed, and which will probably be among the last and dearest memories of my professional life. The printed brief which he submitted to this court in that case was the ablest argument I ever met against the constitutionality of the Fugitive Slave act. It is a professional loss that it is not printed at length in the report of the case. It established, in my mind, his great learning and resources as a cultivated lawyer. And yet I remember well the modesty of his demeanor, accompanying such high ability in so young a man. I recall, too, his singularly able management of the defense, on the trial of the indictment in the federal court. He disputed every inch of ground with signal address, and with all the hearty ability of a man who believed that he was in the right. I shall never forget his closing argument. It has been my lot, during a long professional life, to encounter many able advocates, but I never listened to an argument before a jury more perfect for the case than that was. No man, not thoroughly able, and not thoroughly in earnest, could have made it. The court adjourned just as it was finished, and I remember well the noisy congratulations that were offered to the modest young advocate. He merited far more discriminating praise. It established his reputation as an orator and advocate of a very high order.

The reputation thus generously described had placed the young lawyer so near the front rank of his profession that when Charles E. Jenkins resigned the office of county judge of Milwaukee county, in 1856, Governor Bashford appointed Mr. Paine to the vacancy. The

term expired in 1857, and on the day before the election of judge he was nominated for the place by a convention hastily assembled, and to the surprise of many, and especially of himself, was elected by three thousand majority over the regular democratic nominee; and that, too, in a county that usually gave a democratic majority of over four thousand. So faithfully and intelligently were the duties of this office fulfilled that in 1859, when only thirty-two years of age, he was made a member of the supreme court of Wisconsin—a position that, with one interval of patriotic devotion to his country in another field, he held until his death.

Judge Paine remained upon the bench in the discharge of his duties until the call for more troops issued by the President in July, 1864, when he put into effect a long deferred desire, which had been kept from execution heretofore only because of his wish to aid his country by all means within his power in the station he then held. He resigned his judgeship and enlisted in the Union army, receiving on August-tenth the appointment of lieutenant-colonel of the forty-third Wisconsin regiment, which had been organized pursuant to the above call. The regiment left the state on October tenth, with orders to proceed to Nashville, Tennessee. Before its departure from its Wisconsin camp, Judge Paine received from his associates of the Milwaukee and Madison bars a token of the love and appreciation in which he was held in the shape of an elegant sword. In a letter accompanying it, written by Hon. Win-

field Smith, attorney general of Wisconsin, in behalf of the donors, these appreciative words were used :

In behalf of the gentlemen whose names are communicated to you, I beg that you will accept, in token of our personal regard for yourself, of our interest in your welfare, of our hearty wishes for your future success and happiness, and not least of our approbation of the cause upon which you have entered, the emblems of your new profession which we present with this note.

The response was conveyed in a letter full of patriotism and fraternal farewell to the friends who had thus remembered him. In conclusion he said :

Looking upon the contest in this light, I have watched it with a feeling so intense that it has often unfitted me for the proper discharge of the duties of the position I have just relinquished. And when the last call was made by the President, the aspect of affairs seemed to me so doubtful and full of gloom that I could not but feel it my duty to follow where so many noble men had gone before me, and help to fill up those ranks upon which our fate now depends.

But so far as the testimonial with which you have presented me has reference to the duties of my new position, I must say I accept it with humility and great distrust of my worthiness to receive it, I can make no promise as to how it shall be used. I can only say that with a full sense of the responsibility belonging to a military command in time of war, I desire with my whole heart to discharge properly what duties may devolve on me.

The Forty-third on arrival at Nashville proceeded to Johnsonville, on the Tennessee river, where a large and important depot of supplies needed guarding. At that point Colonel Cobb, who had command of the regiment, was appointed post commandant, and the control of the Forty-third fell entirely upon Lieutenant-Colonel Paine. The stay at Johnsonville was prolonged to November 30, during which time

some sharp salutes of artillery were received from the enemy across the river. The force was moved on the thirtieth through an unbroken wilderness to Clarksville, on the Cumberland river, which was reached on December 4, where it was stationed until the twenty-eighth, when it was moved up the Cumberland, reaching Nashville on the evening of the same day. On January 1 the regiment was again moved to Decherd, Tennessee, where six companies went into camp, while the remaining four were detailed to guard the Elk river bridge. The command remained in provost and guard duty on the Nashville & Chattanooga railroad, until June, 1865, when it was marched to Nashville and mustered out, on the twenty-fourth. Col. Paine had resigned his command some twenty days before this—but not until the war was ended and declared—because of the death of an elder brother. Of the record he made during this brief season of war, no better testimony can be found than that contained in that official publication, *Wisconsin in the War* (page 866), which says:

He was in command during most of their service, Colonel Cobb being engaged on detached duty. The soldiers were deeply affected when it was announced that he was to leave. He united kindness and firmness in discipline. It is the unanimous testimony of the officers of the regiment that never did the humblest soldier, however great his delinquency, receive from Lieutenant-Colonel Paine an unkind or ungentlemanly word. Without ostentation and with rare singleness of purpose, he devoted himself to the welfare of his regiment and the good of the service. Conceding nothing to ambition, nothing to any personal consideration, he moved straight where duty led, undeterred by censure and unmoved by applause, anxious only to be right. Rarely has the



service been blessed with an officer of so pure morals and so sincere a purpose.

With his return to ways of peace, Judge Paine again settled himself at Milwaukee, and resumed the practice of law. While still preserving the quiet tenor of his way and attending to such business as he had in hand, he was enabled at this period to perform one service to the race to which he had given such patient and courageous aid, which illustrates his love of liberty and his desire to see equal right done to all men. In 1865, one Gillespie, a colored man living in Milwaukee, had offered his vote at a regular election, which had been refused. Judge Paine became once more the champion of the black man, and carried the matter into the courts. He based the right for such vote upon an election held in 1849, when a Democratic legislature\* had submitted to a vote of the people whether or not "equal suffrage to colored people" should be granted. The result was a total of 5,265 for, and 4,075 against. He claimed that the intent of the act under which the vote was taken was that the proposition must receive a majority of the votes cast *on that question* rather than of those cast in the general election—a construction far different from that previously accepted. The fight was carried into the supreme court, where Judge Paine argued with such powerful and eloquent logic, that the court sustained his opinion, and the negroes from thenceforth exercised the right of suffrage in that state.

\* At that period, it may be said in passing, the Democrats of Wisconsin were influenced by the spirit of the Barn Burners of New York, and were more anti-slavery than any of their associates in the north.

Judge Jason Downer, of Milwaukee, who had been appointed to the supreme bench, in 1864, on the resignation of Judge Paine, decided in turn to retire to private life, which purpose he carried into effect on September 11, 1867. The most appropriate choice of a successor was made when Judge Paine was asked by the governor to return to his old duties and responsibilities. He was re-elected in 1870, and was still an occupant of the bench at the time of his death. The only other public position held by him was that of professor of the law department of the state university, from 1868 to the close of his life. The university conferred upon him the degree of LL. D., in 1869.

It was while still short of the prime of life, with powers of mind that grew with each passing day and opportunity of exercise, and that had not yet expanded to the full strength that age and experience would have given, and with a fame gaining new holds perpetually upon the love and confidence of the people, that Byron Paine was unexpectedly called upon to lay earthly cares and honors aside and go into the unknown future. He was attacked by erysipelas, which at first presaged no fatal ending, but after some weeks of pain and increasing danger, the malady had reached such proportions that no hope was left. He died on January 13, 1871, at his home in Madison, leaving a mourning wife and four sons.

The announcement of his death was received with a degree of sorrow and sympathy not often accorded men filling even more responsible positions,

while everywhere the feeling was apparent that one was gone who could be illy spared. Governor Fairchild in transmitting to the legislature a special message announcing his death, voiced the popular opinion when he said: "The loss of such a man to the state is almost irreparable. His eminent ability and valuable services as a jurist; his stainless integrity and devotion to duty as a judge; and his unblemished private life, endeared him to the people, and will cause him to be long remembered as one of the best men of his time in the state." The legislature adopted a joint resolution in honor of his memory,\* and immediately adjourned. Like action was taken by the bar of Milwaukee, by that of the state supreme court, and by other associations, and no tribute of public honor usual to such occasions,

\* One of the members who made remarks upon that occasion, touched upon a piece of interesting history in connection with Judge Paine's course during the war, as follows: "Again, in 1863, during the fiercest excitements of the war, and while the public sentiment of the north seemed favorable to almost any concession of the legal and constitutional rights of the state or the people, to strengthen the arm of the executive in its struggle with the rebellion, and when the least seeming of opposition to any possible measure of the administration was violently assailed as disloyalty and treason; when martial law was declared, and the writ of *habeas corpus* suspended throughout the Union by the proclamation of the President, Judge Paine, with the concurrence of Judges Dixon and Cole, with the fearlessness of a just and impartial judge, unswerved by prejudice and unaffected by political excitement, pronounced one of the clearest and ablest opinions of his judicial career, denouncing the doctrine that martial law could prevail or the writ of *habeas corpus* be suspended anywhere in the country where the rebellion did not exist, and boldly discharged prisoners held in a military camp and under a military warrant."

was omitted.† The feeling in his home city, Milwaukee, was expressed by the leading editorial utterances of the *Sentinel*: "On the bench his great ability has been conspicuous. Not less manifest were his even impartiality and perfect uprightness.‡ His logical mind mastered the principles of legal science, while his industry left no precedents unexplored. It disparages no one to say that he, of all judges in Wisconsin courts, possessed in greatest measure the eminent judicial qualities. No temptation however attractive could swerve him, no personal motive draw him from the line where duty led him. We think no man ever imagined that it would be worth his while to try Judge Paine's integrity. . . . The sod will cover the bodily form of Byron Paine, and hide forever all that is mortal of that noblest work of God. His works and his good example shall live, and his memory will be green until all who knew him follow him."

The writer of this sketch has conversed with many of the leading members of the Wisconsin bar concerning the life work and personal character of

† Three years after Judge Paine's death, on July 10, 1874. Mr. E. Mariner addressed the supreme court of the state in a feeling and eloquent manner, and accompanied his speech with the gift of a fine oil painting of the deceased judge. Chief Justice Ryan, on behalf of the court, accepted the gift in an appropriate speech.

‡ From the Milwaukee *Da y Fee Democ at*, of August 25, 1860: "The people of Wisconsin honored and will always honor the conduct of Judge Paine in returning to the La Crosse Railroad company a bond of \$1,000, which it sent to him while he was judge of the Milwaukee county court, although it had no suit decided by or pending before him."

Judge Paine, and the unanimity with which they have recognized his purity, power and courage, sets upon his career a stamp of approval that nothing can remove. The general verdict of all may be profitably summed up in the language used by one—Hon. Winfield Smith—who was an intimate personal acquaintance of the dead jurist, and had means of knowing him not open to many of his associates. "As a young man," said he, "Judge Paine was simple, almost rustic in appearance and manners. His father and brother were more so, but Byron had a natural refinement which modified his appearance and intellect more and more as he grew older, and distinguished him conspicuously from the other male members of his family. He was about five feet ten inches in height, with solid frame and rugged features, hale, hearty, of ruddy countenance, light hair, massive forehead; of a most kind heart, pleasant temper and cheerful disposition. The logical quality was the promising feature of his intellect. The straightforwardness of his argument was its chief force, and the perfect integrity which ennobled his moral nature was also delightful to distinguish in his mental operations. He was an honest reasoner, and the strength of his faculties was such that no one who grappled with him in discussion ever afterwards underrated them. He was supposed by some lawyers at the outset of his judicial career, to rely exclusively upon his own arguments, and was derided as too disrespectful of authority; but the injustice of this censure

became, before long, apparent. In truth, Judge Paine was discovered by those who had to do with him, to have a memory as remarkable as his power of logic; and it has been my good fortune to hear him quote the names and the facts of individual cases which he had discovered, studied and relied upon, in cases decided by him more than a year previous. It seemed as if he never forgot the facts or the points decided in any case he once pursued. His mind seemed continuously to grow and increase in strength, and prominent and noble as his intellect shone before the bar of this state at the time of his death, no one could doubt that had he lived to the age which his splendid physique would have seemed to give him title, he would have grown to be one of the greatest of American judges. He was free from passion and prejudice beyond most men, and to him candor and simple fairness were innate. He was bound by no shackles which he needed to throw off, and his whole vigor could be readily given to the mere intellectual disposition of the judicial question before him for solution. As soon as he came to be known to the members of the state bar, there arose for him an esteem which continually increased. He had a kind heart, which displayed itself in unbroken amiability and courtesy. The strenuous discussions which he sometimes had with others, even among his colleagues on the bench, upon legal questions before them for decision, were purely of an intellectual character, and were so conducted as to

enhance rather than diminish their mutual regard. It seemed impossible that he could have an enemy, and it was impossible that he should be the enemy of any man. He was not ruled by excessive passions or desires, and while clear in his views, while his opinions of right and wrong were clearly defined, while he was practical and, therefore, earnest, zealous when the consideration of great matters aroused him, yet, if thus warmed by the fire of patriotism, or by his hostility to slavery, he seemed never to be wrought up to the point of personal bitterness; and the ardor with which he discussed these questions seemed to leave behind no trace of malice."

The belief held by some that Judge Paine depended too little upon precedent and had no great respect for the opinions of jurists before his time, seems to be effectually disposed of by a consideration of his actual course in that regard. No man was more capable of understanding him as a jurist, or in describing his peculiar bias of mind as a thinker, or his course of action in the administration of the law, than Justice Cole, who sat upon the bench by his side, and has embalmed his estimate in the legal history of the state.\* In that memorial he has said:

The question as to Judge Paine's eminent qualifications and fitness for this position is settled finally—conclusively put to rest—by the published decisions of the supreme court. These will abundantly vindicate, it is believed, so long as they exist, his reputation and character as an able, independent and incorruptible judge. Causes of great difficulty,

magnitude and importance have come before the court while he was upon the bench, have been determined, and have passed into judgments. The record is therefore made up; so far as he is concerned it cannot be changed; and his judicial fame and merit may rest upon it as it is. His friends should be willing, as they doubtless are willing, to let his published opinions decide the matter. Do not these opinions show patient and careful examination; laborious research and investigation; a proper deference to authority; just discrimination of adjudged cases; a clear and firm grip of sound principle? Do they not show that he at least sought to decide causes according to the well established rules and principles of law, impartially, justly, without regard to person or party or any unworthy consideration? That he made mistakes and sometimes fell into error, is no more than saying that he had the infirmity of our common human nature. It is impossible to get a just idea of his strength and ability as a judge from any one of these opinions. Those upon the true limits and principles of taxation and upon questions of constitutional law seemed most fully to call forth the resources, as they taxed most severely the powers of his mind. Many of his opinions might be cited as fine specimens of judicial reasoning, and clear, persuasive argument. The remark was sometimes made that he was too little inclined to follow in the beaten path of the law—to stand *super antiquas vias*. If by this was implied that he had not such a blind reverence for authorities that he dare not question an unsound decision which had the support of a great name, or any number of them,\* the remark was undoubtedly just. He certainly had but little idolatry for mere precedents, as such, which violated correct principles. His mind was critical, but not revolutionary. He laid no violent hands upon the great systems of equity and common law jurisprudence which the great sages of the past have left us. But he realized that those systems, however wise and excellent, were still not perfect. They will bear improvement, and must at times be modified to adapt them to the wants of a highly refined society, and a new condition of things. What wise jurist thinks otherwise? He also had a just appreciation of the responsibilities of his office. He knew that an independent, pure and intelligent judiciary was a sheet anchor of our insti-

\* A favorite expression of Judge Paine's was, "It is the duty of the supreme court not to *count* cases, but to *weigh* them."

\* Vol. XXVII, 'Wisconsin Reports,' p. 64.

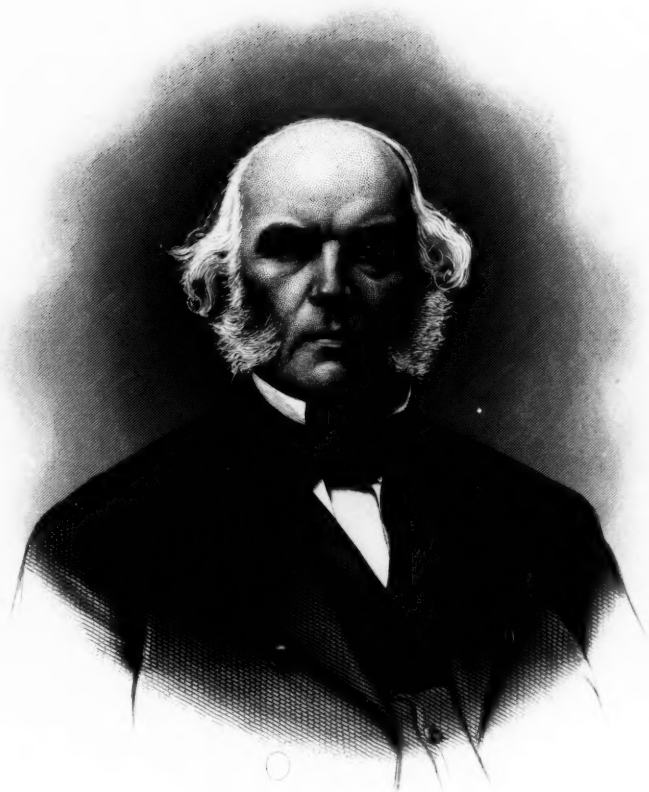


tutions; and, as far as he could, he labored to render it all that, in this state. No one will say that the fountains of justice were polluted by him.

In his personal character, Judge Paine was frank, fearless, sympathetic and true. His life was stainless; and united to his great ability, was a warm affection for those near him or dependent upon him. He was possessed of rare culture, read the German as readily as the English, and in a time of leisure accomplished the translation of a German poem in a manner showing not only a close knowledge of the German tongue but the possession of the poetic faculty in no mean degree. He read much outside of the books of his profession, and the judicial quality in his character led him to believe that there were two sides to a question, and caused him to look at the other side. This course led him to doubt, in spiritual matters, much that those about him believed, but never to scoff at or deride a faith that was not possessed by him. He was fond of nature and of outdoor sports, and with gun in hand spent many hours of leisure in the woods about Madison or Milwaukee. His life, as a unit, was wholesome, true, high-minded, and given more to the service of others than the advancement of himself. There are no lack of men who can lay claim to many of the high and noble qualities possessed by Byron Paine, but there are few who hold them in so bountiful a degree, and in whom can be found so little that friendship could condemn or love desire might be cast out.

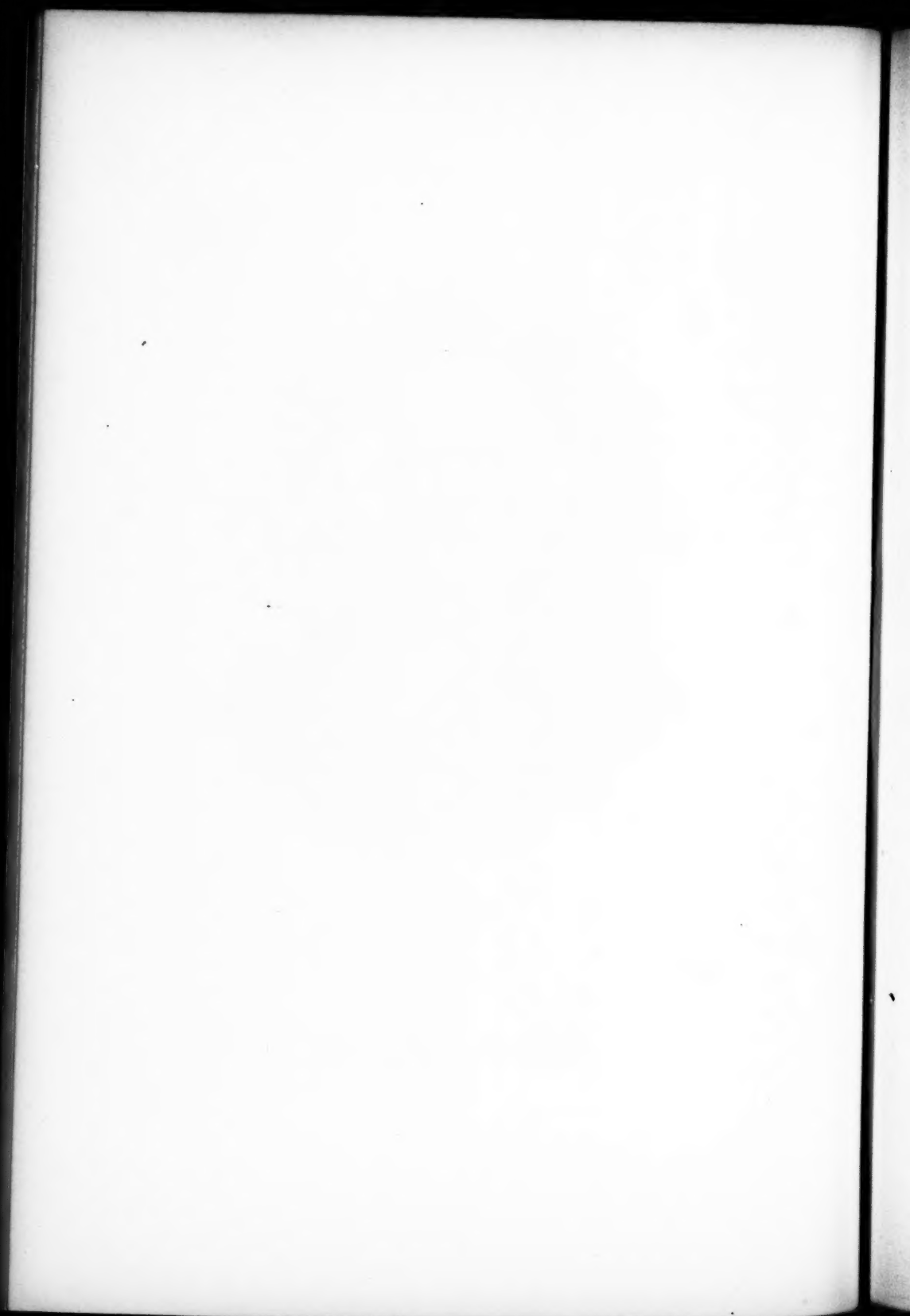
#### ALBERT SMITH.

Still another of the earlier lawyers of Milwaukee was Albert Smith, whose youth was passed in the east, but who came to Wisconsin in time to make his mark upon her legal history and to gain a deep hold upon the affectionate regard of his personal and professional associates. He came of excellent New England stock, and was born in Cooperstown, New York, on June 21, 1805. He received an academic education, and found time in those days and later seasons of leisure to familiarize himself with the classics. He decided at an early period of life to devote himself to the law, being advised in that direction by those who had seen the character and trend of his mind and the unusual ability of which he was possessed. He entered the office of the late Judge Daniel H. Chandler, at Batavia, New York. The study of the law in those days, in that state at least, was not the reading of a few books and the hurried labor of a twelve-month or so. Seven years of earnest study was demanded, and such an apprenticeship was served by Albert Smith before he received the certificate that enabled him to go into court and begin the real labor of his life. He had used this extended period to such advantage and applied himself to his books with such diligence that he speedily took high rank when once at the bar, and there is no doubt that for one period he was truthfully regarded as the ablest chancery lawyer



Monument of William Pitt

Albert Smith



in western New York.\* With abilities early recognized, a native honesty that no man ever questioned and general personal popularity, it is not strange that he was soon called into public life by an election to the New York assembly, his term of office extending from 1840 to 1842. The duties of this responsible position were performed with faithfulness and to such complete satisfaction of his constituents that in the year last named he was nominated by the Whigs of the Genesee district to a seat in the lower house of congress, and elected. At the expiration of his term he was returned and thus served from 1842 to 1846 inclusive—a period of thrilling interest in the history of America, covering as it did the annexation of Texas, the beginning of the war with Mexico and many grave discussions of the never-absent question of human slavery. In politics Mr. Smith was then a "Silver Gray" Whig, and his associates while in Washington, as well as his close friends and correspondents in after life, were counted the most eminent men of that party, among whom were Millard Fillmore—himself a resident of western New York—Daniel Webster and Henry Clay. While a member of congress he sought rather to make himself of benefit to the public than to advance his own cause by displays upon the floor of the house. This was from no lack of talent or forensic power, as he was unusually gifted as an

orator; and those who only knew him in later days, after a throat difficulty had partially lost him the use of his voice, could hardly believe that he had at one time been one of the most eloquent political orators of the Whig party, accustomed to address thousands in the open air with perfect ease. Speeches made by him during Clay's candidacy for the Presidency were esteemed among the ablest and most convincing of any delivered during that season of political unrest. He took a leading part with the Whigs in opposition to the Mexican war, and made a speech in congress in denunciation of that measure.

Upon the conclusion of his congressional service, Mr. Smith returned to the practice of his profession, until the following year, 1847, when he was attracted to the west and decided to make Milwaukee his home. In the early days of his residence there he filled for a time the office of justice of the peace; but was elevated to a place more in keeping with his ability and legal acquirements, when in 1858, he was appointed by the governor of the state to the position of judge of Milwaukee county, to fill the vacancy caused by the appointment of Byron Paine to the supreme bench of Wisconsin. It was while holding this important trust that Judge Smith performed the main labor of his life, and won that large measure of public love and regard which he ever held. Such was the confidence of the people of Milwaukee county in his administration of an office of unusual importance, that he was repeatedly elected thereto,

\* Such, at least, was the often declared opinion of the late Orlando Hastings of Rochester, New York, who was himself almost without a rival in that state, in that branch of jurisprudence.



in the face of a heavy adverse political majority and against the fact that toward the last he was in a condition of poor health. He never made a canvass in his own behalf, but on every occasion was supported by the hearty and earnest good will of a public that had come to know his worth. Upon the conclusion of his first term of appointment, in 1861, he was re-elected; again in 1865; and still again in 1869, and he was yet an incumbent at the time of his death.

No higher compliment could have been paid any man than was involved in these successive elections, as the place was one requiring peculiar qualities and an honesty upon which there should lie no shadow of doubt. In addition to the civil functions pertaining to a county court, his tribunal had the exclusive probate jurisdiction for Milwaukee county. In the discharge of these latter duties, where the fortunes of widows and children were largely committed to his hands, he gave such watchful care and constant attention that there was no chance for wrong on the part of any one, upon the wards thus committed to his official care. He was not only honest in his own dealings toward them, but he refused to allow their interests to fall even momentarily in the hands of one upon whom a suspicion of unfair dealing had fallen. By some means certain men had gained for themselves a reputation for infesting the probate court in order to prey upon small estates. When Judge Smith took charge of the court, he made an onslaught upon them in the same holy zeal in which the money-changers of old were driven from the

temple and would tolerate none of them in official connection about his court. Under his administration the dying father and husband had the safe assurance that his family would enjoy whatever of property he might leave, undiminished by extortion and untouched by speculation.

"An integrity that no man could question, the qualities that constitute a natural lawyer; and those added qualities that go to make up a competent judge." This is the answer of a leading member of the Milwaukee bar, when asked by the writer of this sketch upon what grounds was based the high reputation acquired by Judge Smith in his adopted home. He was capable of advising many who made higher pretensions than himself and was often consulted by the most eminent lawyers of the city on cases of grave importance. Through his whole life he was a great friend to the common law and when it was proposed to adopt the New York code in Wisconsin, he opposed it with all his influence; and when the measure went finally through, he entered in his justice docket—where it was afterwards discovered—this note in eulogy of the discarded common law:

*The Common Law, and the Code*

Departed this life, in its full maturity and strength, The Common Law, with all its forms; a system of jurisprudence matured by age and experience, and which has done more

TO SECURE SAFETY, LIBERTY AND JUSTICE  
to all mankind, than all other systems combined.

*Sic Transit Gloria Mundi!*

March, 1837.

On the same day was born a "Code" undigested,

ill-arranged, repugnant to the general laws of the state and bizarre in all its parts and properties.

*God Save the People from Themselves!*

March 2, 1857.

Judge Smith was a handsome man in personal appearance, of commanding person, and over six feet in height. It was frequently remarked that in form and feature, as in mental structure, he bore a striking resemblance to Daniel Webster. No one who saw him on the bench could doubt the clearness of his judgment, his knowledge of the principles of law or the sincerity of his judicial conclusions. He was of high but peculiar intellectual powers, with little of that demonstrative energy and passion which are needed in the equipment of a great advocate; but his temperament was calm and judicial, his will just but resolute and his judgment clear and impartial. His legal knowledge was extensive, accurate, and always at hand. "He was one of those lawyers," has been said, "peculiarly fit for the bench and only to be seen at his best in the discharge of judicial functions. In his office while his health permitted him, he was conscientiously industrious and faithful in the performance of his duty." Judge Smith, it is needless to say, had his faults and with most strong men held personal prejudices, but, as Judge Ryan once tersely and truthfully said: "When he went upon the bench the scales that he held up were no more affected by his personal views of persons or things, than the scales held by the diamond weigher are affected by any whim of his."

As has been already noted, Judge Smith was a Whig until the breaking up of that party, when he became a Republican, and remained such until the end of his life. He was temporary chairman of the first Republican convention ever held in Wisconsin and in all proper ways used his influence for the advance of the principles of that organization. During the war he was a strong Union man, doing what lay in his power for the good of the cause. The partial loss of voice which had befallen him, prevented his going out among men and advocating his country's cause with the eloquence of earlier days, but his heart was none the less engaged.

Judge Smith died at Milwaukee on August 29, 1870. He had been in ill health for some time, having had an attack of paralysis while on the street cars a year and a half before. From this he partially recovered but in the winter of 1869-70 was taken with a fever which left him much prostrated. He seemed on the fair road to recovery for a time and even when the fatal attack was well upon him it was not supposed that the end was so near. He was the lawyer to the last and when a friend called upon him before his decease, he said—with reference to the complications which had developed in his case—"I guess I shall win the case, if they don't get too many side issues on me." But the judgment that had decided justly for so many, was at fault here and the end was soon at hand.

The announcement of his death was received with sincere sorrow by the people of Milwaukee. The utterances of

those who had known Judge Smith and had been associated with him through many years of social and legal contact, were peculiarly earnest and touching, showing that it was no perfunctory motive that had brought them forth, but that they had come from the heart and gained the unquestioned endorsement of the judgment. "It is, then," said the resolutions of the Milwaukee bar, "the language of conscience, not of our affections, which in these resolutions speaks of Albert Smith as a 'just judge.' Not that he was perfect as man or judge. His faults are before us, as his virtues. We forget neither, for both went to make up the man we admire. . . . He sought to know and to do the duties of his station. Feeling the responsibility of the judicial position, he had that respect for it which is the characteristic of the true lawyer. He would have counted it a shame to do anything less than his best in that place. He did not so much avoid, as break down and trample upon the snares set for the feet of the inexperienced judge. He sought to walk in the path of the good judges and the great lawyers."

The tribute paid by the Hon. Matthew Carpenter at the meeting in which the above was adopted was so touching, so truthful and so illustrative not only of the character of Judge Smith, but as well of the oratorical power of the gifted man by whom it was delivered, that a mere brief extract seems hardly adequate to the occasion. "There is another pause in our labors," said Senator Carpenter when the meeting had been called to order, "another

break in our circle, another shade on the Stygian river. The Hon. Albert Smith, who has so long walked conspicuous and lived blameless amongst us, has stepped before us into the path of that higher life, whose portal we call Death. While we are all touched by the impressive solemnity of this occasion, there is nothing in it to affect our hearts. Could our voices reach him, whose loss we sincerely regret, we should feel like tendering congratulations rather than sympathy. To do one's whole duty in life and to die in peace as the evening approaches, is the most fortunate consummation to which mortal man can attain. Our associate has so lived and so died. In the grave where we must lay him is no work nor device, only rest. 'For so He giveth His beloved sleep.'

"What he has gained here he cannot lose there. The good name, the guileless heart and uncomplaining conscience with which Albert Smith left the earth are all safe, reserved, garnered up for his reward on the resurrection morn. . . . But at the grave of a good man, and such, indeed, was our parted associate, there is the consolation that at last all things are secure. No new temptation will overcome him in an unconscious hour; no new trial will prove an overmatch for his integrity; neither guilt nor dishonor can attach to him there. The child is putting on the armor to meet the troubles of life; and we can only hope he will not be overcome. But our friend has laid his aside, after the combat has closed and not a scratch can be found

upon it. The warm chords of personal affection must always bleed when snapped asunder and mortal men will recoil and weep to witness the last struggles of one they loved. But standing apart in the separation of philosophical abstraction, there is nothing in the life of Albert Smith, as we have witnessed it progressing or ending, that we would have otherwise. As it is appointed unto man once to die, death is an indispensable event in the existence of a man, as his birth and coming in the due and orderly course of nature is no more to be regretted. Death is promotion.

"Judge Smith was a remarkable man in many respects. He possessed many of the qualifications most indispensable to a good judge. In the first place he looked like a judge. The first time I was ever in Milwaukee, in 1849, I think, I met a gentleman walking down Wisconsin street and at first, thought it was Mr. Webster. The resemblance was so striking that I stopped and inquired of the first person I met who it was and I was told that it was Albert Smith. The same robust frame, broad shoulders, majestic bearing, deep eyes and overhanging brows, made the resemblance between the two men in personal appearance very noticeable. In the next place he behaved like a judge. He always seemed to be reserved, almost haughty; he seemed to scan the men as well as the causes that came before him; but his judgment rested upon the causes, not the men. He believed that when two men were directly opposed that one must be in the right

and the other in the wrong, as to the particular matter of contention. He labored to ascertain where the right was, and always upheld it. In every cause tried before him, one side succeeded decidedly, and the other side was just as decidedly overthrown. Many a lawyer has left his bar disheartened by defeat, but I never heard any disappointed man question the purity of his motives or the honesty of his opinions. And he never was known to deprive a defeated party of a truthful bill of exceptions, to shelter his erroneous judgments from an honest review in the supreme court. He had somewhat of the old Roman firmness. He could say 'no' to his best friend when he felt it his duty to do so; and he possessed so many admirable qualities and in so large measure the respect of all who knew him, that he could deny an application most emphatically, without making the defeated attorney feel that the result was intended to be an injury or an insult to any one. Honesty in a judge—I do not mean a mere exemption from the low and coarse corruptions of office, but a lofty, intellectual impartiality, a holy indifference to all things save truth and justice—is so indispensable and it so clearly characterizes all that was seen of Judge Smith, that I think it will be the crowning quality of his judicial life, which will endear his memory to the Milwaukee bar. It is such a comfort to practice before such a judge and such a satisfaction to submit a cause to his determination, though a lawyer always feels like kneeling to



thank God when the blessing is actually vouchsafed and personified before him. Then you can go straight at your case, sure if you can reach his convictions that no back door entreaties of your enemies or of the judge's friends will influence the even scales of justice. With a corrupt judge, when you have satisfied him you are right, your trouble then has just begun. And as you read authority after authority full in your favor and see the face of the judge growing pale with fear and the next crimsoning with shame, you feel you have to contend with adversaries you never see and combat reasons you

never hear. The bitterest, most withering contempt of man and the fiercest condemnation of God, fall deservedly upon the 'UNJUST JUDGE;' in his dying ears, to his departing and affrighted soul, what malediction could be more awful than the solemn declaration of the GREAT MASTER: 'With what judgment ye judge ye shall be judged.'

"But God be praised, Albert Smith goes to his grave under no such condemnation. We shall bury him with deep regret. We shall cherish his memory with profound respect."

J. H. KENNEDY.

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#### A PERSONAL VIEW OF PRESIDENT CLEVELAND.

Authority, rather than divinity, may so hedge in a king, in such portions of the world as are yet king-ridden, that his life is a sealed book to the people over whom he rules; but no such exclusion would be possible, or profitable, to the chief magistrate of this great American republic. The common sense majority seem to have drawn a line in their curiosity at that point where a rational and neighborly interest ends, and a snobbish or brutal curiosity begins. There are doubtless some people, outside of Washington and within, who care to know the dishes upon which the President's family breakfasted, or how many buttons adorned the gloves of the

mistress of the White House at her last reception; but we feel that they are limited in number as well as intellect, and digest the tea-kettle gossip of their own neighborhood with the same interest and effect, as the larger affairs of that social circle of which the whole people may be said to be a part.

Yet this loose tittle-tattle can be avoided, and a proper and appreciative interest taken in the personal make-up, habits, modes of thought, and intellectual movements of the man who has been given such authority over us, and in whose hands so large a share of power has for a season been lodged. In the flood of personal gossip that

swept across the land when Grover Cleveland was chosen to the Presidential chair, and that still runs in daily rills through papers, society and otherwise, there has been much that was trivial, some full of a bitter taste, a fair share false in effect if not intention, and a great deal of wholesome and fair-spoken truth. It is easy to clear the focus-glass of all films of personal dislike or party passion, and look upon the man as he really is. He makes no claim to qualities or talents of which he is not possessed, and should not be abused because of their lack. He has never been sentimental in speech or professions, and cannot be gauged, therefore, by the rule of sentimentality. He has never set himself up as a model for men or as their teacher, and should not be measured by that perfect standard which so many erect for others but reject for themselves. Commencing with a feeling far from effusive friendship or admiration, and standing yet upon an opposite political belief, I have watched Grover Cleveland from the day of his election to the governorship of New York, to the present, and have been led to this summary. That his chief strength lies in his ability to "grow up to" each occasion that presents itself; while his predominant qualities as man, statesman, and, if we may use the word in a proper sense, politician, are a wonderful common-sense, and an intuitive understanding of the needs and impulses of the people.

Take for illustration of this point his attitude towards those who, by their long continuance in office or methods of

party management, have gained for themselves the name of "professional politicians." By years of indulgence and unofficial authority, many of these, of both parties, had come to feel that no man could say them nay, and that their threat of desertion or vengeance would open any door to their entrance, and tune any ear into a sympathetic acceptance of their whispered suggestions. The spirit of ambition and personal authority by which they are moved, led to the tragedy of 1881 and the assassination of a man far too noble for the perilous political dilemma in which he had been placed. For years these hordes had run over all official barriers and laughed at the locks upon the doors of the White House itself. The people had long ago become tired of their persistent presumption; and when President Cleveland quietly notified them that they must have their day and place with other men, their howl of indignant rage was lost finally in the applause sent up by the people, of all parties, from Maine to California.

Some of the utterances used by President Cleveland in meeting the demands of these men and disposing of them, ought to find permanent place in American history, and undoubtedly will. On one occasion when a party of office seekers had gained access to him and made their demands, and upon his refusal to accede to them, asked in anger for his reasons, he responded with laconic directness: "I don't see anything between you and the offices except the law, and my promises to see it executed." To others on a similar errand he said:

"There is a law bearing on the question, and I have had something to say myself about removals and appointments, which you will find in my letter to Mr. Curtis. Neither seems to have received your attention, and I will be glad to send you copies of both."

Early in the month of inauguration, a party of western Democrats made their call at the White House, to consult with the President about a number of offices then held by Republicans, whom they expected to displace and replace with men of their own selection. They were in good spirits, and felt sure that such authority as they bore in their own services to the party would be recognized and obeyed. When their cases had been stated, Mr. Cleveland said: "Are the men in the offices not of good character?"

The spokesman admitted the claim, and added: "But they are Republicans, and we are Democrats. We think turn-about would be the fair thing."

"Are you prepared to charge them with anything wrong in office? Do they not administer them properly?"

The reply was as before, with the addition: "You see, sir, we all worked hard for the party last fall, and our district gave a larger majority than ever. We thought the offices would go with the election, and so we have come for them."

After a moment's pause that was becoming embarrassing for the visitors, the President asked: "When will the terms of these incumbents expire?"

"In two years," was the eager and hopeful response.

"Two years—come to see me then!"

To another who was importunate in a like demand, he said: "Bring me the charges on which the incumbent can justly be removed, and I will take up the question. You must show me that he is dishonest, incapable, or in some other way unfaithful. Till that is done, I will do nothing."

These things are not done by accident. Nor are they long withheld from the housetops. The angry and the disappointed who went out of the White House in the early summer of 1885, after interviews like those related above, told the country of their misadventures for the purpose of sympathy, and awoke ridicule. The President had no need of publishing his side. The crowds that see a poor dog going down the street with a teakettle close in the rear, need no other announcement to show that some deft hand has been at work. The procession speaks for itself.

There is a story told by some of the correspondents that is probably true, and is certainly so well in keeping with the President's course in other matters, that it might have happened a dozen times in one day. It runs something in this way: A well-known member of congress had been visiting the White House daily for three weeks in the interest of a constituent who wanted an appointment.

"Do you congressmen spend much of the time at your homes when congress is not in session?" the President inquired.

"Oh, yes!" replied the member,

"we stay here but little of the time that congress is not at work."

"Nearly all are here now?"

"But few of us, comparatively."

"I receive a good many calls from congressmen every day"—significantly.

"Do you?" with a look of surprise.

"Yes; I have a quorum every day, if they would all stay."

"Well," stammered the member, "I think most of us will get away pretty soon now, as we are about through with our work."

"Do you think of leaving us soon?" inquired the President, with earnestness.

"I—I was thinking of it," came the reply, slowly and nervously.

"Well," sighed the President, "if there is anything that I can do for you you can just address me here at the White House. We get the mails promptly."

The member took the hint, and, rising, remarked that he might leave to-night, to which the President said:

"You may tell other congressmen that I will attend promptly to any request they may make by mail."

A senator called for the purpose of pressing the appointment of a constituent to an assistant commissionership. After listening to the statement of the case, the President said: "When I was practicing law I found that an instrument in writing usually outweighed an oral statement. You senators seem to have a habit of signing petitions\* for

candidates, and then you ask verbally for the appointment of others to the very positions. I can't afford to waste time considering such requests. Half the democratic senators have signed a petition for the retention of the incumbent of this place and your name is on the list. I don't know the man, but he is certainly well endorsed." "Oh, no!" said the senator, "I have not signed such a paper." Thereupon the President produced a petition bearing the

show how his opinion in that direction was created: When he was elected mayor of Buffalo, the first vacancy he was called upon to fill was that of chief of police. There were a number of applicants. One of these had a mammoth petition in his favor, signed by any number of the citizens of Buffalo. Mayor, now President, Cleveland was impressed with the magnitude of the petition and the eminent respectability of the signers. He was about to confer the appointment upon the much-endorsed applicant, when one or two of his personal friends entered an objection and said the contemplated appointment would not do. "But," said Mr. Cleveland, "look at the signatures to this petition in his favor." After some persuasion Mr. Cleveland, at the request of his objecting friends, agreed to hold the matter open for a few days. In a day or two after a second petition was presented by these friends to Mr. Cleveland. It was signed by some of his most personal and valued friends. It was addressed, not to Mayor Cleveland, but "to his Excellency, the Governor of New York." It recited that Mayor Cleveland was not fit to hold his office, that he was guilty of embezzlement and misdemeanors, and ought to be impeached. These allegations coming from his best friends, Mr. Cleveland was at first startled. Then the explanation followed. The paper had been signed by men who had not read its declaratory preamble, and who would not have signed it if they had. Still, it served the purpose to show how easy a thing it is to get a number of signatures to a paper. Mr. Cleveland confessed then and there that he was not so much impressed with the much endorsed applicant for the chief of police as he had heretofore been and gave the appointment to another man.

\* Mr. Cleveland's faith in the meaning of petitions is not as great as the above would lead one to suppose. The following newspaper paragraph will



senator's signature, as stated. "I never was so flattened out in my life," remarked the senator, when narrating the incident to a friend. "The fact is, we sign almost anything, but it has generally been understood that it means nothing." That President Cleveland has no such understanding of formal endorsement in writing, one man of policy and duplicity found out to his cost. A man apparently well endorsed had been appointed to a judgeship, and when the fact became known, one of the parties who had signed his petition for the place, seized his pen in righteous wrath and took the President to task for his action. "None were more astonished," he declared, "than those who had signed his petition and I regret to say that my name is to be found upon it. I have refused several whom I know to be unfit, but I signed this one thinking it would never be considered, and not for one moment believing the appointment was possible. When first presented to me I put him off and hoped to escape, but he came again with it, and I with others signed it, thinking there was no chance for its reaching even your consideration. It was signed by many prominent persons who hated to refuse and hoped and thought it would result in nothing."

To this calm and remarkable confession the President answered in a manner that left no doubt of his position. "I have read your letter," said he, "with amazement and indignation. There is but one mitigation to the perfidy which your letter discloses, and that is found in the fact that you confess your share

in it. I don't know whether you are a Democrat or not, but if you are, the crime which you confess is the more unpardonable. The idea that the administration, pledged to give the people better government and better officers, and engaged in a hand-to-hand fight with the bad elements of both parties, should be betrayed by those who ought to be worthy of implicit trust, is atrocious, and such treason to the people and to the party ought to be punished by imprisonment. Your confession came too late to be of immediate use to the public service, and I can only say that while this is not the first time I have been deceived by lying and treacherous representations, you are the first one that has so frankly owned his grievous fault. If any comfort is to be extracted from this assurance you are welcome to it."

We have had a great many high officials who would have thought these things, but there have been many—with an eye open to re-election—who would not thus plainly and bluntly have written them.

A man of Cleveland's mental and physical type is inclined toward dogmatism if not obstinacy, and it is pretty well understood that in official matters he usually has his own way. This may not be altogether pleasant to those about him, but it gives more trouble to them than to him. He assumes his right, and moves ahead in its exercise. A short time after the formation of the new cabinet, a senator asked one of its members how he liked the new administration.

"Very well, indeed," was the reply.

"How does the cabinet get on?"

"Admirably," responded the secretary; "but we have already learned one thing."

"What is that?"

"That we have a chairman."

The President largely dictates the policy of his administration without aid and some mistakes that might have been avoided may be due to that fact. In the matter of appointments he says little to those about him until the deed is done. He possesses a natural dignity of character, and few, if any, treat him with familiarity even after long acquaintance. He is not the man to slap on the shoulder and greet with a nickname. He loves hard work rather than society, is at his desk early and late, and has remarkable dispatch in the disposal of business. He endorses no paper until he is sure, in his own mind, at least, that his proposed action is justified by the circumstances of the case. Nothing can hurry him into action unless he is so assured. In speaking to a friend he once said: "I

will sign no appropriation bills until I have examined them and I must be given time to examine them. When I put my name to a document I want to know what is in it. I will not have a pistol put to my head with the threat that if I don't sign at once the country is ruined. When they first tried this on me at Albany I told them I would first consult my wife about it and after that they did not try it again." He makes no pretensions to knowledge in matters he does not understand; loves children and can make his way with them without difficulty; has a natural hatred of shams; and likes people to be honest with him, even if they are compelled to tell him unwelcome truths. While not ambitious to a great degree, he has an evident belief in his destiny and himself, and it was only a plain way of stating that fact when he remarked to a caller one day: "These people will discover bye-and-bye that I am not to be set up as a kind of tobacco shop sign." There are not a few people in America who made that discovery long ago.

J. H. KENNEDY.

## A PARTY'S ORIGIN, AND ONE OF ITS FOUNDERS.

The seven cities that claimed the dead Homer, have been imitated by more than twice seven men who claimed to have been the creators and sponsors of the Republican party—to have issued the call for its first meeting, to have been present at its first gathering, and to have selected the name under which it grew. Be that as it may, there are now not a few hopeful and earnest men and women in America who believe that a time will come in the not far distant future when as great a strife will arise as to how the Prohibition party had its beginning; for they are persuaded that their organization is yet in its germ condition, but that at some sudden impulse from the people grown restless from unpunished wrongs, it will grow to large proportions, and win its way to victory. As it is principle rather than office for which they labor, they are content to bide their time and wait.

But there is one point concerning which there can be small ground for dispute. To Ohio belongs the honor of enunciating the first political platform that had for its basis total abstinence and the legal prohibition of the liquor traffic. In January, 1869, Dr. M. Y. Turrill of Cleveland, chairman of a committee of the temperance league, issued a circular letter in

which he said to each of the persons to whom it was addressed :

We have been led to believe that you are in favor of political action as applied to temperance, and for the advancement of the cause. By political action we mean a determination to vote only for openly pledged temperance men, on an independent platform, whose planks shall be Total Abstinence and Prohibition of the Liquor Traffic. The greatest evil of the day can only be overthrown by the passage of sound laws and their enforcement thereafter. To secure these objects we must elect men to office known to favor them. . . . It is the belief of many that success will only in the end be ours as we advance and take high political ground, by the formation of a State Temperance party. . . . We earnestly ask you to give us your name, to be appended to a call for a state convention, to be held at an early day, at some central and accessible point, then and there to organize a State Temperance Party, that at once we may gather our forces together to battle against the terrible enemy of our homes.

The response was prompt from all portions of the state, and accordingly a call bearing the names of many well known men was issued. After the recital of many facts against the liquor traffic, the call concluded as follow :

Recognizing these as facts, and believing that the time for action is now, and that a longer delay would not only be injudicious, but highly criminal, with an abiding faith in the justice of our principles, we ask all who are in favor of immediate, determined and independent political action, as applied to temperance and none others, to meet with us in convention at Crestline on the fourteenth and fifteenth of



*Yours Truly*

*Geo P Russell*





April, 1869, to organize a State Temperance Party with *Prohibition* for its foundation.

In pursuance of this call\* there met at Crestline on the designated day thirteen earnest men who proceeded to build a platform that expressed their views upon the liquor question, and formed the prohibition party, which has since been one of the regular political organizations of Ohio. It has seen some stormy days, and some full of promise, and has on more than one occasion caused the older parties to fear its power and hesitate in their course lest the third party should win too large a following of the people. Laying aside all the other good influences that have flown from it, it has been a constant check upon the Republican and Democratic organizations, and prevented them from action in favor of the liquor interest that might otherwise have been considered safe or politic.

Without detracting one jot of credit from the many noble men and women who have been at work for the temperance cause in Ohio during this generation, it is my purpose to speak more fully of one who formed a part of that courageous little band in Crestline in 1869, and who has worked in

season and out of season for the temperance cause with a zeal possible only to one whose heart is thoroughly in that cause and who understands the full power and evil of the enemy to which he gives combat. George P. Burwell, of Cleveland, is already known to the people of Ohio, for the work he has done for them, and the greater things he has sought to bring about. A descendant from the early Puritan stock, he early exhibited many of their traits, always controlled in his associations and acts by a conscientious conviction of duty, a devotedly religious nature, and a greater desire to know what was right and duty than what was popular. Hence he was among the first to take sides with the antislavery reform, and the early temperance movement, and has ever been in the front, and an unswerving advocate, of these reforms. He joined the Washington Society in 1845, and was its secretary for two years. In November, 1847, he united with the Sons of Temperance, and became one of the most prominent and influential workers in that order in Ohio. In October, 1859, he was elected to the office of Grand Worthy Patriarch of Ohio, and filled the position with marked ability and efficiency. In 1860 he was made a member of the National Division of North America, in the city of Portland, Maine, and became a prominent and influential member of that body, retaining connection with it for many years during which time he attended sessions of the National body in Portland, Maine; Hamilton, Canada; New Haven, Connecticut; Cleveland, Ohio; Boston, Massachusetts; Wilmington, Delaware; and Washington, D. C. His connection with the order

\*D. W. Gage, in "Regulation vs. Prohibition," in Lorain County *Exponent*, September 1, 1886: "It should be told, however, that of the large number of those who signed the call, when the rigid test was applied they shrank away in numbers like Gideon's army, until only thirteen could stand the test and one of them went back to the flesh pots of the Republican party before election, and still has a home with them. With the exception of J. E. Ingersoll, all who started at the Crestline convention died with the prohibition harness on, or yet live and are in the forefront of the battle for God, and Home, and Native Land."

continued uninterruptedly for a quarter of a century, during all of which time he attended, upon the average, more than one meeting per week, and was always at his post of duty, and one of the most valuable men of the order. He was also prominently connected with the Independent Order of Good Templars, and the Temple of Honor, and at one time held the position of Deputy Worthy Chief Templar. In all of these positions he was ever active and faithful, ever solicitous to reform and lift up the fallen, and educate and develop in right ways the young. As chief officer over a section of Cadets of Temperance, his influence upon the young was felt in a marked degree. Mr. Burwell's father was a Whig, in politics, and the son naturally leaned in the same direction in his early days, but his strong anti-slavery views led him to cast his first vote for James G. Birney for President. He continued to vote and follow the fortunes of the Abolition party and its successor, being several times a candidate upon the ticket, until success came in the election of Abraham Lincoln. He remained a member of the Republican party until April, 1869, when, as above related, he allied himself to the little band that had sworn to give the rest of their lives to fighting an evil as great and dangerous as slavery. From that time until the present he has been, and yet is, a prominent, outspoken, consistent and fearless advocate of the Prohibition party and of the principles upon which it is based.

The success won by Mr. Burwell in the several walks of life in which his feet have been set, did not come by accident, and was not forced upon him by any happy

combination of circumstances. It has been won by hard work, and an honest and honorable discharge of every duty that it has been his allotted part to perform. He has worked his own way up in the world. He was born at Milford, Connecticut, on January 4, 1817. His father, Enoch Burwell, and his mother, Sally Peckham, were poor, but possessed of those sterling qualities of integrity and industry that were the best legacy that that could have been left the son. The latter's opportunities for acquiring an education were limited. He attended the Lancasterian school in New Haven five years; and after that spent some time in the country schools of Talmadge, Ohio, with one winter at an academy in the same town.

While working upon the farm and assisting his father in clearing it from the heavy oak timber with which it was covered, he developed a taste for mechanism and skill in handling tools. He also had some longing for the medical profession, but the way did not seem to open to him in that direction, and at the age of nineteen he began to learn the carpenter's trade. At that time machinery was almost unknown for preparing building materials, and the carpenter went into the woods, felled the timber, and from thence to the entire completion of the work it was done by hand. For four years he followed the building trade, taking contracts therefor. Then he carried on the carriage business for five years; removed to Cleveland, Ohio, in May, 1847, and opened a grocery store. Owing to limited capital, this did not prove successful, and at the end of two years he again

returned to the building business, which he prosecuted with varying success for eighteen years; when, after one year spent in a wall paper store, he was induced to enter into the insurance business, forming a connection with H. F. Brayton, as solicitor, in 1867. From that beginning he has rapidly grown into prominence as an underwriter, until he stands among the first in Cleveland. In addition to representing a line of fire insurance companies, he is the general agent of the Hartford Steam-boiler Inspection and Insurance Company for eastern Ohio, western Pennsylvania and western Virginia, and has thoroughly established that branch of the business in the district assigned him. He has also served as president of the Cleveland Board of Underwriters. In the way of public and benevolent enterprises he was appointed one of the trustees of the Cleveland Bethel, and remained in connection with its board for nine years, during which time the present Bethel property was purchased and put into successful operation.

Mr. Burwell is naturally of a religious turn of mind, and has sought ever to know the truth and do it so far as lay within his power. Though reared mainly under Congregational influences, he was, when in his nineteenth year, on the ninth of March, 1836, converted, and united with the Methodist Episcopal church in the township of Talmadge, Ohio, and has from that time to the present retained his membership in that communion, with the exception of five years, when, owing to his strong anti-slavery views, he united with the Wesleyan Methodist church,

that held views in accord with his own upon that subject. During all the years of his connection with the church he has been one of its most faithful, efficient and active workers, whether as a simple member or as an officer, and he has held about every official position within the body, and notably that of the office of recording steward, for twenty-five consecutive years, with only about three months respite, doing all the clerical work, and, at the same time, superintending the building of the large stone church known as the First Methodist Episcopal church of Cleveland, where he now holds his membership. In the Sunday school he has ever been a faithful and active worker, having been connected with it in some capacity almost continuously for over sixty years, and has held nearly all the official positions known to that organization, and at the present time is actively engaged in the work, and every Sunday conducts the lesson service of two Bible classes.

That natural strain of loyalty and devotion to any tie that may properly attach itself to him, that form so prominent a feature in Mr. Burwell's character, have led him to take a deep interest in everything concerning those of his own blood and kin. He has spent some very pleasant and profitable hours in tracing the line of his ancestry back into an early period of English history. He is the seventh generation from one John Burwell, who was made a free planter in Milford, New Haven county, Connecticut, on November 29, 1639, and was born on a portion of the original lands purchased from the Indians, by his ancestor, and



known even yet as "Burwell's Farm." Following the line still further back, we find that the Burwells were of Knights' degree, and settled first at Colton hall, in Baddington, Hoxen Hundreds, England. Tradition gives the origin of the family name as follows: "Sir Knight John encamped on one occasion, with his body of knights, near an old well around which a quantity of burdocks grew; and from this circumstance he was called John of the Burr-well, John de Burwell, John Burwell."

This interest in the family's past, held by several of its members, has had some very pleasant results. On the eighteenth of August, 1870, a picnic gathering of the Burwell family and their connections by blood was held at Burwell's farm in Milford, Connecticut, at which time and place the Burwell Historical Association of North America was formed. The subject of this sketch was chosen its first president, and in 1872 the association sent him to England to gather such facts of history and genealogy as he could obtain from the records, or otherwise, relating to the family. While there he traced the family record back to the first individual that bore the family name. Along that line were many of high distinction in their own right and upon their own merit, as well as by connection. During his visit across the sea, he made a trip across the channel to Paris, and spent a little time visiting places of peculiar interest, and visited some of the ruins made by the Commune after the Franco-Prussian war.

Mr. Burwell has been twice married. His first wife, Mary Jane Baker, was

a native of Milton, Vermont, and they were married on December 20, 1837. A family of four daughters and two sons were the fruit of this marriage. One daughter, the wife of W. J. Hayes, the well known Cleveland banker, died March 29, 1887. One died in infancy, and the two sons in early manhood. Two daughters are now living, the wives of prominent business men, who are classed among the leading and enterprising men of the communities of which they are a part. His second marriage occurred on June 15, 1853, to Miss Louisa C. Worley, who was born at Brownsville, Fayette county, Pennsylvania, November 12, 1820. Her father, Daniel Worley, moved to Cleveland in 1824 and was postmaster of the city for nine years.

The general characteristics of the Burwell family seem to be those of integrity, fidelity, a pride in well-doing, and a frankness and candor that inspire confidence in all with whom they are associated. In all the line of ancestry there does not appear a record anywhere of a criminal stain upon their fair name. Whether in official position or in the private walks of life all seemed to have filled well their part, and the subject of this sketch has always maintained an unblemished reputation, and a character without spot.

In personal appearance Mr. Burwell is the picture of health and robust activity. His large and strongly-knit frame, together with his cleanly, abstemious and temperate habits, have enabled him to do a vast amount of work, and yet permit him to have an erect carriage and an apparent age twenty years less than the actual. His hair has but a slight sprinkling of gray,

and in his social bearing he has a sprightliness that would scarce be expected in one of his years. He is of an unusually social nature, a good conversationalist, and takes pleasure in recounting to his friends what he has seen and learned in his travels. Rarely can a person be found who is his equal in value as a traveling companion. He is usually the first to make a new discovery, and takes pleasure

in bringing the knowledge of it to others. Little of value escapes his notice in traveling, and he has an unusual faculty of making the time pass pleasantly. He is one of those who will always have warm friends in those who know him well, and those who dislike him are more likely to merit his dislike than he theirs.

SEELYE A. WILLSON.

## EDITORIAL.

THE Philadelphia *Times* of May 7 contains an article of exceeding interest on the great financial crash that was heard in Philadelphia on May 10, 1837, just one half century ago, when the Pennsylvania Bank of the United States suspended payment, and led the way to the terrible financial disasters of that year. To the general interest incident to so sensational an episode in the history of financial America, is added something of a personal nature by the fact that the article contains the observations of Mr. George Plumer Smith, a prominent Philadelphian, who was a witness to many of the scenes of that year of ruin, and has the knowledge and insight that enable him to understand more of a fact than the surface indicates. "Mr. Smith, in 1837 and for some years after," says the *Times*, "was largely engaged in the mercantile business in Pittsburg, but it was necessary for him to spend a great portion of his time in Philadelphia and New York, and he was therefore an eye witness of many of the incidents that happened in these two cities. Besides this he has thoroughly mastered the political and financial history of his day, and possesses, therefore, unusual power of describing the perilous time of which he now speaks."

Mr. Smith gave the *Times* correspondent a graphic and vivid review of the causes that led up to the suspension, and of the scenes immediately connected therewith. Of the total losses of the time he makes this estimate:

The accumulations of the capital of two generations of commerce and internal trade were largely represented in the capital of the United States bank and of the other banks so largely increased in number in 1835-1838 in the western and southern states, most of which were now entirely wiped out, and in investments in the bonds of these states, a good deal of which were repudiated and all greatly shrunken in value.

The total sum of the losses in capital thus invested, leav-

ing out of the question the immense sums wiped out by the almost universal bankruptcy of merchants and storekeepers, would, if it could be accurately ascertained, surprise and appall the financiers of the present day. I have heard it estimated at from thirty to sixty millions, and do not think myself the larger sum an overestimate. The State Bank of Illinois went to pieces in 1841, bringing terrible disaster upon the people of that state, but the State Bank of Indiana withstood the storm, and in 1857, when all the western banks suspended, it held on its way and managed its own affairs and that of the state in a manner that, for its success, has never been equaled in the financial history of the United States. It was managed by Hugh McCulloch, who organized the United States banking system and was afterwards secretary of the treasury, a gentleman now spending his closing years in Washington, and who, if he would, could make a more intelligent and instructive history of the banking era of the years we have been discussing than any man yet spared to us.

The article forms a valuable contribution to history, and we would like to see it printed in a more accessible and permanent form.

VOLUME sixth of the 'Virginia Historical Collections' (of which we made mention last month) contains, among many other things, an article which bears the somewhat extended caption: "Memorial of the Federal Prison on Johnson's Island, Lake Erie, Ohio, 1862-1864, containing a list of prisoners of war from the Confederate states' army, and of the deaths among them, with 'Prison Lays' by distinguished officers." The article is accompanied by a picture of the prison barracks, from a water color sketch executed on the island by a prisoner in 1864. A prefatory note thus explains how the memorial came into existence:

The donor (Mrs. M. Taylor *see* Miss Kate Uhler Smoot) as a girl was constantly sending boxes of food, clothing and essential comforts to all of the northern prisons, using therefor her pin money, and also working with her needle to get more funds to aid her in her endeavors to alleviate the sufferings of those of her countrymen who languished in northern prisons. In response to a box sent to Johnson's

Island a letter was received from Colonel B. H. Jones saying that if she would send a blank book to him he would fill it as a souvenir of the Island and of the war, and it is this book which I now present in her name.

The dozen poems printed in connection with the other matter are valuable rather as curious pictures of war and prison emotions than for their literary merit. That portion of war history to which the memorial relates is enriched somewhat by its publication, and we would be pleased to see more of the same character—from federal as well as confederate. It is now in order for some officer or private who was on guard at the Island to place his recollections upon paper.

It is not generally known to this generation that the late Dr. Theodatus Garlick of Bedford, at that time vice-president of the Cleveland Academy of Natural Science, published in 1857 a treatise on the "Artificial Propagation of Certain Kinds of Fish." Dr. Garlick was a

great authority upon matters of that character, and probably has never had full credit for his services in the advancement of fish culture. The book is quite rare, and of course would not be sufficiently advanced to give any idea of the methods and discoveries of these later days. It is composed of a series of articles originally prepared for the *Ohio Farmer*.

THE managers of the Cleveland Public Library are making an effort to add to that institution all the new and second-hand books upon American history and biography that their funds will allow. Care is taken to select only such as are of some actual value. The chances for securing many valuable books of this character are decreasing with each passing year, and many that are accessible and cheap to-day will be out of reach or only to be had for large prices in ten years from now. The money thus expended is being most wisely invested.



## CORRESPONDENCE.

*To the Editor of the MAGAZINE OF WESTERN HISTORY:*

## MASON AND DIXON'S SURVEY.

I have read in the February number of the *MAGAZINE OF WESTERN HISTORY* Mr. George A. Robertson's paper upon the "Notes of Mason and Dixon's Survey." I was not aware of the existence of this volume until I saw it mentioned in Assistant Sinclair's report upon a re-survey of the Pennsylvania and West Virginia boundary in 1886. In the library of the Historical Society of Pennsylvania, at Philadelphia, is a manuscript journal of Mason and Dixon, which is evidently the Pennsylvania duplicate of their official field book, containing the detailed notes of all their observations, but which does not contain a great deal of the matter included in the Washington volume. The latter seems to be a diary of itinerary rather than a field book. In the preparation of my report upon the New York and Pennsylvania boundary I had occasion to refer to Mason and Dixon's operations, and I examined the Philadelphia volume with a great deal of interest, and I regret very much that I was not aware during my visit to Washington at that time (February, 1885,) that the very full and interesting notes you quote from were within my reach.

The volume at Philadelphia was published this spring by the secretary of internal affairs, in connection with the re-surveys of a portion of the line, and it covers 220 octavo pages. The Washington volume should also be published in full.

Very truly yours,

H. W. CLARKE.

New York and Pennsylvania Boundary Survey, Syracuse, May 11.

*To the Editor of the MAGAZINE OF WESTERN HISTORY:*

## THE WEEPING WILLOW.

The "History of Boycotting" has brought me many

letters of suggestion and pleasant criticism. One of these informs me that Mr. Andrew Hamilton, whose name is mentioned in that article, introduced the weeping willow into this country.

I tell the tale as it is told to me, and perhaps, among your readers there are some who can determine more correctly than I can the weight to be attached to it. It came to me in the following form:

"Mr. Hamilton, during the later years of his life, revisited London, where as a young man he had studied law and was admitted to the bar. Visiting Pope's villa, at Twickenham, he was impressed by the beauty of a weeping willow, and as he was about to depart for America he begged a twig, which was given him. From this twig all the weeping willows in the United States are descended. The weeping willow has, however, this peculiarity—it is either male or female in the classification of botanists. As the tree at Pope's villa was a female tree, there are no male weeping willows in this country."

My botanical knowledge does not suffice for judgment upon this anecdote.

Very sincerely,

ARTHUR DUDLEY VINTON.

New York City, April, 1887.

[If botanists or others have any information of a historic character upon the above subject, it will be gladly received.—EDITOR.]

*To the Editor of the MAGAZINE OF WESTERN HISTORY:*

## ST. TAMMANY'S OR MAY DAY.

One of the first settlers of Ohio used to give lively descriptions of the merry celebrations of May day festivals which she witnessed and in part shared in her girlhood. The anniversary was apparently as regularly observed as Christmas for some years. In the eighteenth century St. Tammany had as little connection, as far as I can discover, with politics, as St. Nicholas has at the present day. His day was devoted to social enjoyments, good dinners and

games suitable to the season. An old play thus describes the festival: "This is the first of May; our shepherds and nymphs are celebrating our glorious St. Tammany's day. We'll hear the song out and then join in the frolic and chorus it o'er and o'er again. This day shall be devoted to joy and festivity."

Webster's dictionary says that Tammany is supposed to have been a chief of the Delaware Indians friendly to the whites, who was born in the seventeenth century in what is now the state of Delaware, but removed when he came of age to the banks of the Ohio. In his old age people resorted to his wigwam to hear him "discourse of wisdom" from far and near. "When and by whom he was first styled Saint, or by what whim he was chosen to be the patron of the Democracy does not appear."

Buel alludes to St. Tammany's day in his *Journal*: "May 1, 1786. This being May day is kept by all the western and southern people with great glee. A pole is erected and decorated with flowers, around which they dance in a circle with many curious antics, drinking, carousing and firing guns in honor of St. Tammany, the patron of the festival.—May 1, 1787. This is St. Tammany's day, and was kept with the festivities usual to the frontiers. All the sergeants in the garrison crossed the Ohio to Mr. Williams' and partook of an excellent dinner.—May 1, 1789. St. Tammany's day kept as usual. A party of the sergeants went up to the island and had a dinner provided at old Mr. Kerr's."

S.

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AMONG THE BOOKS.

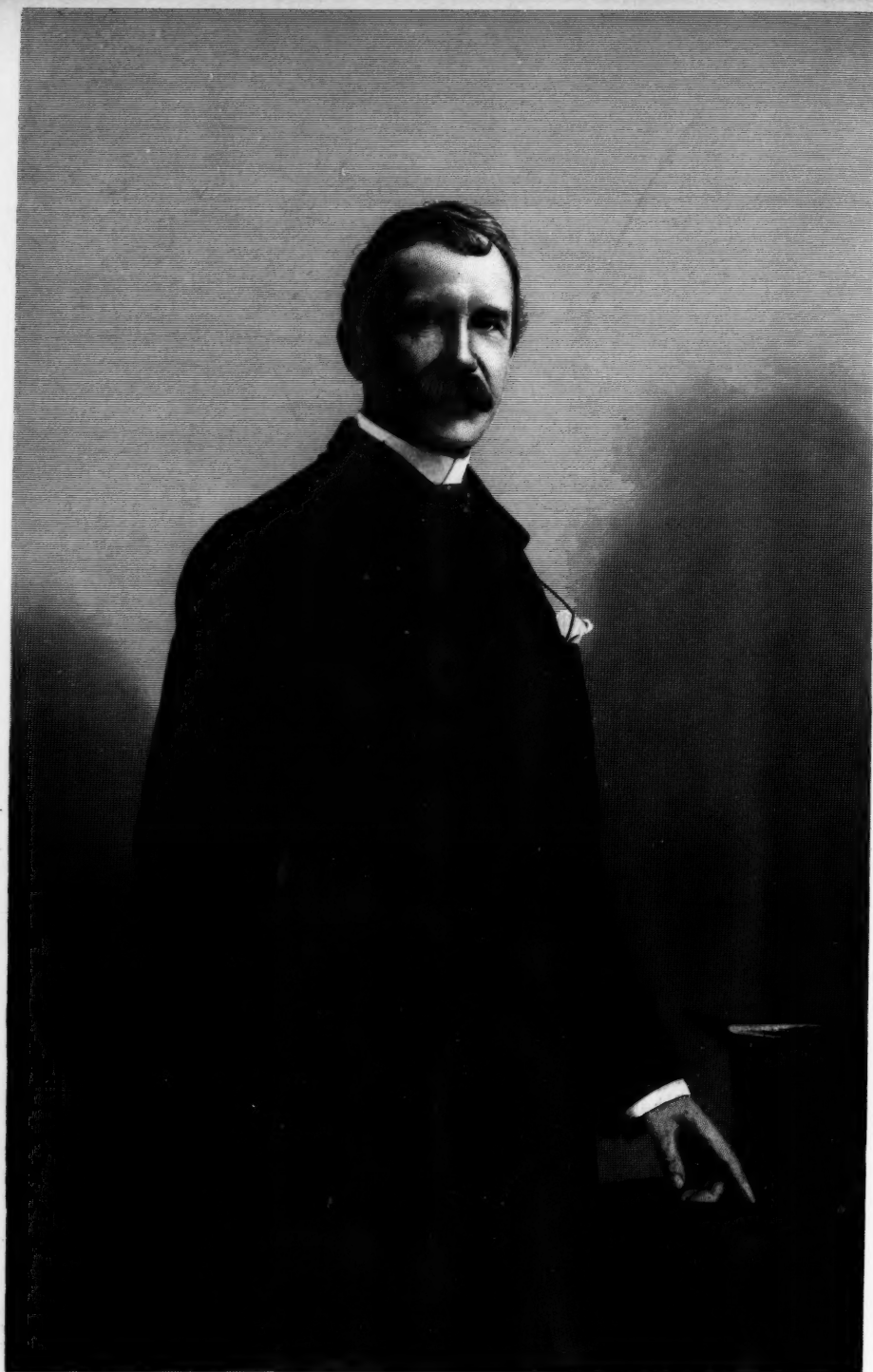
'DANTE: A SKETCH OF HIS LIFE AND WORKS.' By May Alden Ward. Roberts Brothers, Boston.

The interest in the life and works of the great Italian poet seems to grow rather than decrease with the passing years, and in this work and the two accompanying it from the same house ('A Shadow of Dante' and 'Dante and His Circle,') a new attraction has been added to the theme. The fact that the lady by whose pen the Life has been produced is a resident of this city, will give her readers here who might not have been otherwise attracted. The book is well written, shows labor, ability, re-

search and insight. It is a welcome addition to the literature concerning the great poet of Italy.

'LOCAL GOVERNMENT IN CANADA.' By John George Bourinot.

This is the latest and one of the most valued numbers of the 'Johns Hopkins University Studies in Historical and Political Science'—a series of works that cover new fields of research, and are enriching the historical possessions of America with the addition of each number.



Portrait of William Mead

*William Mead*